THE WEEKLY UNDERWRITER
INSURANCE DEPARTMENT SERVICE
116 JOHN STREET, NEW YORK, N. Y. 10038

ARKANSAS

Subject—Applications for Agent's, Solicitor's or Broker's Licenses

From—Hon. John Norman Harkey, Insurance Commissioner

To—All Companies Licensed in Arkansas

Directive
Re: Section 66-2810, 2811, 2813 and 2814—Arkansas Insurance Code
February 22, 1967
Effective March 1, 1967

Effective March 1, 1967, the following procedure will be followed when applying for a license as a resident agent, solicitor or broker in this State:

1. Each applicant shall submit a completed application prepared by this Department.

2. Each application shall be accompanied by a personal-credit report completed by an independent, recognized reporting company. This report shall be prepared at the expense of the sponsoring insurance company or agency, and such report shall have been made not less than 30 days prior to the date of the application's submission to this Department.

3. The proper examination fee shall be attached.

4. Upon determination that the application is in order, the Department will mail to the applicant an examination permit.

NOTE

A. Personal-credit reports submitted to this Department will be confidential and not subject to public inspection.

B. No applicant may take the examination unless his application and all necessary material have been received by this Department at least two weeks prior to the examination.

C. No one will be admitted to the examination until he presents his examination permit.

Received for publication May 23, 1967

~~5-1519~~ §1519 - Credit Reports

Add a new Subsection 3 as follows:

"3. In lieu of ordering ~~such~~ the report, the Commissioner may accept a personal credit report completed by an independent, recognized reporting company submitted by the sponsoring insurer ~~company~~ ~~agency~~. The report shall be accompanied by a stamped self-addressed envelope bearing the return address of the sponsoring insurer. The licensing supervisor will file only one in the applicant's personal report, which will be immediately detached from the application and returned to the sponsor. The record shall ~~not~~ or duplicate such report be kept in the applicant's file."

December 10, 1968

COMMENTS ON CHAPTER 37 OF THE PROPOSED MAINE CODE

Line 17 of Section 2857, on page 350, contains a caption which reads "Application or notice if proposed insurance not be delivered". It is noted that this caption is based on the current caption 6 in Section 1206. The current caption is misleading because the requirements set forth in Subdivision 4 of Section 1206 are applicable only when either an individual policy or a group certificate is not delivered to the debtor at the time the indebtedness is incurred. The reference in the proposed code to "Application ... not delivered". is not accurate. It is recommended that the caption should read "Copy of application or notice or proposed insurance if individual policy or group certificate not be delivered at time indebtedness is incurred."

In lieu of such a long caption, you might consider a caption such as "Notice of Proposed Insurance". In this event, either the application or the specified notice of proposed insurance would, in fact, constitute notice of insurance to the debtor and that is the purpose of the provision.

Union Mutual Life Insurance Company

DATE	TO	FROM (AGENCY/H. O. DEPT.)
11-12-68	Mr. Thornsjo	

RE: PROPOSED MAINE INSURANCE CODE

In reviewing the proposed Code, I wish to call your attention to the following items which should be reviewed prior to the Hearings.

Section 221 - Examination of Insurers

On page 12, line 8, it is provided that each domestic insurer shall be examined not less frequently than every three years. As you know, we are currently examined at least once every five years and it is hoped that we will not be bothered with more frequent examinations.

Section 228 - Examination Expense

It is provided in this section that the expense of the examination of an insurer shall be borne by the company examined. It is hoped that this can be changed to at least have a maximum expense for domestic insurers.

Section 2627 - Rate of Premiums

Provision is made here for minimum first-year Group Life Insurance premiums. Is it still considered necessary to have this type of provision here in Maine inasmuch as we object to the provision as it appears in the New York statute?

Section 4251

Are we satisfied with this section as it applies to Blue Cross-Blue Shield?

Section 404

What is the Company's feeling concerning the application of this section to a company such as TIAA?

Section 601

Do these fees and taxes agree with our understanding of the needs for dedicated revenue of the Insurance Department?

Where in the proposed Code is permission for insurers to do business with Federal, State or Local Governments?

Where in the proposed Code are the provisions to take care of the conflicts between Union Mutual's Charter, which is the result of private legislation, and possible amendments in the future.

William L. Barber
Senior Vice President

RECEIVED
NOV 13 1968
LAW DEPT.

WLB:rc

cc: Mr. Russ

Proposed

Maine Insurance Code

Title 57 Hospitals / Med. Serv. Corp.

Page 516

§ 4254. Contracts

To prevent hospitals from incurring losses on account of their contracts with hospital service corporations, or from overcharging cash-paying patients to make up the deficit, it is suggested that the following provision be added to this section:

"Provided, further, however, that any element of cost which is unreasonable in charges to the public by a hospital shall also, and in the same ratio, be included in the reimbursement formulas for the service corporation."

LHA/ALC

§ 410

COMMUNITY LIFE INSURANCE COMPANY
2501 CONGRESS STREET ••• PORTLAND, MAINE 04102

December 10, 1968

Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

Dear Senator MacLeod:

On behalf of Community Life Insurance Company, a domestic stock life insurance company, I would like to present for the consideration of your committee, the following recommended changes in the proposed Insurance Code.

CHAPTER 5 - PARAGRAPH 410

The suggested requirement of initial capital resources for a stock life insurance company of $2,000,000.00 is, we feel unnecessary, and to a domestic stock life insurance company, a burden.

While it might be suggested that presently organized domestic stock life insurance companies originally organized for less than the suggested requirement, would be better off with the new law, we submit that this is not the case. We feel that a total of $1,000,000.00 is adequate capitalization and we would appreciate your committee giving consideration to changing the requirement to a total of $1,000,000.00 rather than $2,000,000.00. For a State of the size of Maine, it is difficult to build a large surplus or attract a large amount of new money, and because of the retaliatory requirements of other states, it will be exceedingly difficult for a domestic stock life insurance company to expand its businesses. We feel that it will be a great economic advantage not only to the companies in Maine but to the State as well to encourage domestic insurers to write as much business as possible beyond our borders, as this is helpful in returning dollars to be used within the State.

Very truly yours,

Neil J. O'Leary
President

NJO/af

It is noted that there is an apparent exception in Section 2851 of the proposal for loans or other credit transactions of more than five years' duration, but it is not clearly expressed since it is tied in with the language "isolated transactions", another exception in the present law. The National Association of Insurance Commissioners, at its Portland, Oregon, meeting in June, 1968, changed the scope of the NAIC Model Bill to ten years. It is suggested that the language of the present law be retained and that the scope be increased from five years to ten years in accord with the NAIC Model.

It is recommended that line 1 on page 353 be modified to delete the word "policy" from the caption and insert the word "certificate", since a reading of the subsection indicates that it is the intent that only the certificate be filed where the group policy is issued in another jurisdiction.

With respect to the language "before or if they b ecome effective" in line 3 of the same subsection, the precise meaning of this phrase is unclear and it is felt it could effectively be deleted and that reference be made to a policy which "is or has been delivered" in the second line, in order to make it clear that this subdivision is applicable irrespective of when a group policy was, or is, issued.

My final comment is with respect to Section 2864. The first sentence of Section 1212 of the current law has been deleted from the current proposal. The present law provides that the Commissioner may, after notice and hearings issue regulations. Our question is, What is the purpose of the deletion of this first sentence ?

Reciprocals

LAW OFFICES OF

LOCKE, CAMPBELL & CHAPMAN

HERBERT E. LOCKE (1891 - 1962)
JOSEPH B. CAMPBELL
FRANK G. CHAPMAN

TEL. 623-4545
DEPOSITORS TRUST BUILDING
AUGUSTA, MAINE 04330

Monday, November 3, 1969

COPY

Dear Ken,

Subsequent to writing my other letter of this date, further examination of the copy of the bill we have reveals a possible discrepancy between Section [illegible] and Section [illegible](2)(B), appearing at page 460, lines 11 through 13. Each was dealt with the method of serving process upon an insurer. Section [illegible] applies to all insurers and provides service upon the Commissioner, whereas Section 3858(2)(B) applies only to reciprocals and requires the power of attorney to provide for service upon the attorney-in-fact. This could lead to some confusion as to the proper manner in which to serve process upon a reciprocal.

Although I believe that none of the provisions of the Act affecting reciprocal insurance legislation would be adversely affected by either of these provisions, I thought it might be a good idea to point out the possibility of deleting this provision in Section [illegible](2)(B), page 460, lines 11 through 13. Such a deletion would not be vital to the interests of our members, but it might serve to forestall confusion. Incidentally, the recent Reciprocal Law originally had a provision similar to Section 3858(2)(B), but it was deleted in the preliminary drafting stages. Of course, the amendment to Section 3858(2)(B) would be subsidiary to those suggested in my letter.

Sincerely yours,

Hon. Kenneth P. MacLeod
95 Harlow Street
Bangor, Maine 04401

Sec. 228

COMMUNITY LIFE INSURANCE COMPANY
2501 CONGRESS STREET ••• PORTLAND, MAINE 04102

December 10, 1968

Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

Dear Senator MacLeod:

On behalf of Community Life Insurance Company, a domestic stock life insurance company, I would like to present for the consideration of your committee, the following recommended changes in the proposed Insurance Code.

CHAPTER 3 - PARAGRAPH 228

We are in general agreement that the company or individual examined under the direction of the Insurance Commission, should be responsible for a large share of the expenses incurred. While we certainly do not wish to have our cost of doing business raised any higher than necessary, we would like to see the law when the final revision is completed, treat each and every company or individual equally. We cannot see any justification for discrimination against stock life insurance companies, or any other company that might in any way render non-competitor with other domestic insurance.

Very truly yours,

Neil J. O'Leary
President

NJO/af

American Mutual Insurance Alliance
December 6, 1968

MODEL TERMINATION BILL

Section 1. As used in this Act:

(A) "Policy" means any automobile policy providing automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, which is delivered or issued for delivery in this state, and insures as the named insured one individual or husband and wife resident of the same household, and under which the named insured's motor vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type which is not used as a public or livery conveyance nor rented to others; or
2. any other four-wheel motor vehicle classified and rated by the insurer as a private passenger motor vehicle under its rule and rate filings, which is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

provided, however, that this Act shall not apply (a) to any policy which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy, or (b) to any policy issued under an automobile assigned risk plan or automobile insurance plan, or (c) to any policy insuring more than four motor vehicles, or (d) to any policy covering the operation of a garage, automobile sales agency, repair shop, service station or public parking

place, or (e) to any policy providing insurance only on an excess basis, or (f) to any contract principally providing insurance to such named insured with respect to other than automobile hazards or losses even though such contract may incidentally provide insurance with respect to such motor vehicles.

(B) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy effective at the end of the policy period of a policy previously issued and delivered by the same insurer to the same named insured, or the issuance and delivery of a certificate or notice extending a policy beyond its policy period or term; provided, however, that policies with policy periods or terms of less than six months shall for the purpose of this Act be considered as if written for successive policy periods or terms of six months beginning with the effective date of the first of such successive policy periods or terms; and any policy written for a term longer than one year or any policy with no fixed expiration date shall for the purpose of this Act be considered as if written for successive policy periods or terms of one year.

(C) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premium on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

Section 2.

(A) No insurer shall exercise its right to cancel a policy except for the following reasons:

1. nonpayment of premium; or

2. the driver's license or motor vehicle registration of either the named insured or of any other operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation at any time during the policy period or, if the policy is a renewal, at any time during its policy period or the one hundred and eighty (180) days immediately preceding its effective date;

provided, however, that modification of automobile physical damage coverage except coverage for loss caused by collision, by providing for the application of a deductible amount not exceeding $100 shall not be deemed a cancellation.

(B) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(C) This section shall not apply to refusal to renew a policy.

Section 3.

(A) No insurer shall exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days prior to the effective date of cancellation, except that when cancellation is for nonpayment of premium such notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days prior to the effective date of cancellation.

(B) This section shall not apply to refusal to renew a policy.

Section 4.

(A) The notice of cancellation shall state or be accompanied by either a statement of the reason or reasons therefor or a statement that upon written request of the named insured, mailed or delivered to the insurer at least 10 days prior to the effective date of cancellation, the insurer will specify in writing the reason or reasons for such cancellation. If the reason or reasons for cancellation do not accompany or are not included in the notice of cancellation, the insurer, shall upon such written request of the named insured specify in writing the reason or reasons for cancellation. The insurer shall mail or deliver such reason or reasons to the named insured within 10 days after receipt of such written request. Failure to sepcify such reason or reasons following such request shall constitute a violation of this Act, but shall not invalidate the cancellation.

(B) This section shall not apply to cancellation for nonpayment of premium nor to refusal to renew a policy.

Section 5.

(A) No insurer shall refuse to renew a policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days prior to the expiration date of the policy.

(B) This section shall not apply:

(1) if the insurer has manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; nor

(3) if the insured fails to pay the premium as required by the insurer for renewal.

Section 6.

(A) When automobile liability coverage is either cancelled or nonrenewed by an insurer, the insurer shall notify the named insured of his possible eligibility for automobile insurance through the automobile assigned risk plan or automobile insurance plan. Such notification shall accompany or be included in the notice of cancellation or nonrenewal required by this Act.

(B) This section shall not apply to cancellation or nonrenewal for non-payment of premium.

Section 7.

Proof of mailing of notice of cancellation or nonrenewal or of reasons for cancellation, to the named insured at the address shown in the policy shall be sufficient proof of notice.

Section 8.

Notwithstanding the failure of an insurer to comply with this Act, termination of any coverage either by cancellation or nonrenewal shall be effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement thereof.

Section 9.

There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner of Insurance or against any insurer, its authorized representatives, its agents, its employees, or

any firm, person or corporation furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in any written notice of cancellation, or in any other communication, oral or written specifying the reasons for cancellation, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearing conducted in connection therewith.

STATEMENT
OF
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
TO
THE COMMISSION ON REVISION OF INSURANCE LAWS
OF THE STATE OF MAINE

The National Association of Independent Insurers is a trade association which represents nationally over 340 property and casualty insurers of all types -- stock companies, mutual companies, reciprocals and Lloyds Plan insurers. 57 of our members are licensed to do business in the State of Maine.

Our Association has long participated actively and constructively in the development of state insurance codes and laws regulating the fire and casualty insurance industry. Our efforts have consistently and continuously been directed towards obtaining and maintaining a regulatory framework which will facilitate adequate and proper supervision of the business, be conducive to reasonable competition in the public interest and assure the ready availability of an insurance market to satisfy the needs of the insuring public.

It is in this spirit that we have reviewed the proposed Maine Insurance Code and offer the following comments and recommendations.

Sec. 12. General penalty; enforcement.

Subsection 1 of this section should be changed to read as follows (new matter underlined; omitted matter bracketed):

> "1. Each willful violation of this Title for which a different penalty consisting of fine and/or imprisonment is not provided by a provision of this Title or other applicable laws of this State, in addition to or in lieu of any applicable prescribed denial, suspension, or revocation of certificate of authority or license, shall subject the violator to a fine of not more than $1,000 or imprisonment for less than one year, or both such fine and imprisonment; except, that if the violator is a corporation or entity other than an individual, the fine shall be not more than $3,000 for each violation. Any director, officer, manager, employee or representative of a violator corporation or other violator entity shall be subject to fine and imprisonment as above provided for willfully authorizing or [knowingly] participating in any such violation."

With a code as extensive and comprehensive as this one, it is evident that there is considerable danger of inadvertent violations of any one of a number of directory requirements. For this reason, and in fairness and logic, it would appear to be desirable to distinguish between willful and non-willfull violations insofar as the imposition of these general penalties is concerned.

Sec. 200 et seq. The Insurance Commissioner.

We suggest that there should be some qualifications listed for the Commissioner such as five years' responsible experience in the insurance industry, or other business experience.

Sec. 222. Examination of holding companies, subsidiaries, agents, promoters and others.

We believe that this section should be deleted. Legislation involving this subject cannot properly be considered until the National Association of Insurance Commissioners (NAIC) has had an opportunity to draft model legislation. The NAIC is presently considering this topic.

Sec. 228. Examination expense.

The last sentence in subsection 1 of this section should be amended to read (new matter underlined; omitted matter bracketed):

> "As to expense and compensation involved in any such examination the Commissioner shall [may] give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that Association."

Sec. 229. Administrative procedures; hearings in general.

We believe that a subsection 7 should be added to this section reading as follows:

> "7. The provisions of this section and of sections 230 thru 235 shall not apply as respects Chapter 25 (Rates and Rating Organizations)."

Chapter 25 provides for specific procedures with respect to hearings on filings under the rate regulatory law. Unless the above provision is included, the general hearing requirements reflected in sections 229 thru 235 inclusive would carry over and apply to rate law proceedings as well. We do not believe that this is the intended result.

Sec. 406. General eligibility for certificate of authority.

Representing, as we do, several Lloyds Plan insurers who are members of our organization, we are considerably concerned about their ability to be authorized as insurers in the State of Maine. This type of organization, of course, has a substantial place in the insurance system provided the public, insuring the unusual risk which conventional insurers will not touch. We feel that they should be permitted to be authorized in Maine.

Sec. 410. Capital funds required.

Subsection 1B of this section in our estimation is too broad in its implications of having the Commissioner set capital and surplus requirements for an insurer after initial qualification. It produces a lack of certainty on the part of the insurer with respect to investments which it may make, reserves it must maintain and, essentially, what its financial state is at any given moment. Moreover, to incorporate by reference into law the standards or concepts developed by a private, non-legislative body such as the NAIC, we think, is wrong. This constitutes legislation by such body and, consequently, violates constitutional principles.

Sec. 425. Transactions with parent corporations, subsidiaries, and affiliates.

We believe that a subsection 4 should be added to this section which would provide:

> "4. This section shall not apply as to transactions between an insurer and a subsidiary insurer of which it owns 100 per cent of the outstanding capital stock."

Ch. 25. Rates and Rating Organizations.

This chapter, which provides for a combined property and casualty file-and-use rating law, is basically a good law. However, we would like to see the following changes incorporated in Sections 2303, 2315, 2317 and 2325.

Sec. 2303. Making of rates.

The proposed rating law provides that rates "shall not be excessive, inadequate or unfairly discriminatory," but does not define these terms. We believe that definitions are needed in order to provide guidelines under which the Insurance Commissioner can proceed in carrying out his responsibility under the rating law. The absence of such guidelines would place an undue burden on the Commissioner. The California rating law's definitions of "excessive" and "inadequate" rates have served that State well for over twenty years, proving

beneficial to all concerned including the Insurance Commissioner, insurance companies and the public. We suggest that subsection 1B of section 2303 be amended as follows to include those definitions:

> "B. Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.
>
> "No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.
>
> "No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly."

Sec. 2315. Stamping Bureau.

This section should be limited to property insurance. We assume that the intent is to carry forth the provisions of the present law, and this provision now is contained only in the property rating law.

Sec. 2317. Deviations.

In 1959, the NAIC provided for the appointment of a Subcommittee to Review Fire and Casualty Rating Laws and Regulations which many of you will recognize as the so-called "Gerber Committee". Among other things considered by the Committee was the one-year limitation on deviations. The Committee recommended:

> "Since the annual renewal requirement may place an undue burden upon deviating companies, the Subcommittee recommends that deviations should not have a fixed maximum duration but should continue without renewal and reconsideration either until substantive change is made in the filing to which the deviation is related or until such other time as the regulator concludes that reconsideration is necessary."

Many states adopted the recommendation and made the suggested change in their rate laws.

Under subsection 4 of section 2317, deviations can continue in effect for only one year unless terminated sooner with the approval of the Commissioner. This subjects the filer to an annual unnecessary burden and expense in having to refile deviation applications and go through the practice of notifying its producers when the deviation is approved. It also imposes an unnecessary burden on the Insurance Department's having to re-process deviations annually even though there may have been no change in external circumstances to warrant any change in the deviation. It would seem that it should be sufficient for the Department simply to maintain continuing control over the life of the deviation.

We recommend, therefore, the inclusion of the words "not less than" before the word "one" in line 5 appearing on page 224.

Sec. 2325. Assigned risks.

We believe that physical damage and medical payments insurance should not be included via the legislative process in that the National Industry Committee on Automobile Insurance Plans has recommended that the Maine Automobile Insurance Plan be broadened to include such coverages, and that eligibility requirements be greatly broadened.

Respectfully submitted,
National Association of Independent Insurers

Donald W. Cory

By: Donald W. Cory
Assistant Counsel

DWC/mcr
12/6/68

Section 2716

Page 316, line 27

Subsection 2 of this Section appears in the Uniform Policy Provisions, and in the present Maine Code, as a parenthetical remark. If the form is to be changed, it would seem that subsection 2 might be clearer if it read: "The first clause of the provision set forth in subsection 1 relating to the irrevocable designation of beneficiary may be omitted at the insurer's option."

Section 2723

Page 323, line 1

Apparently the parenthetical remark which begins on line 14 of page 332 should be closed after the word "organizations".

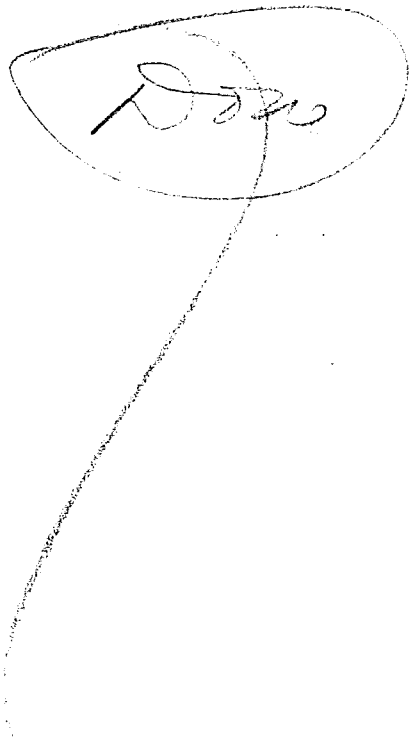
Section 2734

The phrase "subject to any right of cancellation" which is in the Uniform Act and the present Maine Code, after the word "force" (which appears in line 6 of page 326 of the proposed Code) has been deleted from the proposed Code. Apparently this deletion has been made on the presumption that the deletion of the optional cancellation Uniform Provision requires, as a matter of consistency, the deletion of any reference to cancellation in this Section. That is not a correct presumption. It is correct that the deleted phrase was applicable to the cancellation Uniform Provision, which has been deleted, but the deleted phrase also was applicable to other specified reasons for termination and the complete omission of the phrase in this Section raises the presumption that in no event can you design an individual policy which would provide for termination due to specified contractual conditions. The Commissioner should have the power to approve certain types of individual policies which may be terminated for the reasons specified in the contract. The NAIC report which recommended the deletion of a Uniform Cancellation Provision did not recommend the deletion of the phrase "subject to any right of cancellation" in this Section. (See pages 286-296, Volume II, 1965, NAIC Proceedings)

Section 2735

Page 326, line 15

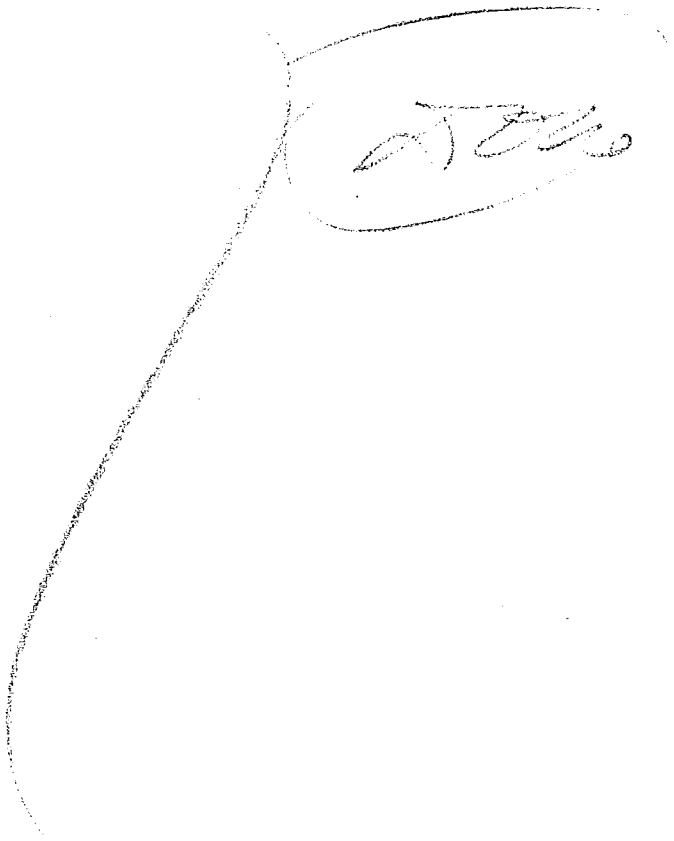
In the interest of clarity as to the applicability of this Section, the word "individual" should be inserted between the word "issuing" and the word "health".



December 10, 1968

COMMENTS ON CHAPTER 35 OF THE PROPOSED MAINE CODE

The final word "for" in Section 2801, subsection 1, appears to be unnecessary.



With respect to Section 2813, line 31, you may want to revise the title of the Section to "Blanket Health Insurance". It is to be noted that Section 2809 does not show "group Health Insurance" but only shows "Payments; Beneficiaries". There should be a consistency between the group and the blanket sections in this respect.

Comments on Chapter 33 of the proposed Maine Code.

Section 2702 - Short Title

The words "uniform health policy provisions law" should be initially capitalized.

Section 2703

Section 2703 is entitled "Scope, Format or Policy" in the current draft.

It should be entitled "Scope, Format of Policy".

Section 2708

Page 312, line 24

A colon should be placed after the word "premium".

Section 2705

Page 310, in line 5 changes

The word "company" has been substituted for the word "insurer". This is an NAIC Uniform Law and the NAIC gave a great deal of consideration to the choice of the word "insurer". These Uniform Provisions are mandatory for use in individual policies in all states. No other state has changed this word. In the interest of uniformity in statutory language in this Uniform Law, the word "company" in this Section and in other Sections of this Chapter, should be changed to the word "insurer", as it was used in the NAIC Uniform Law.

Section 2709

Page 313, line 16

The word "the" has been used instead of the Uniform Law word "said". Irrespective of whether or not the word "the" is a better word to express the thought than the word "said", we are dealing with the Uniform Policy Provision language which should not be changed in Maine in a manner which would require special forms for this state.

Commission - 635 2851

HEALTH INSURANCE ASSOCIATION OF AMERICA

CHICAGO · NEW YORK · WASHINGTON

LESLIE P. HEMRY, *President*

LEGAL DEPARTMENT
John P. Hanna, *General Counsel*

New York Office
750 Third Avenue
New York, New York 10017

December 10, 1968

MEMORANDUM BY HEALTH INSURANCE ASSOCIATION OF AMERICA IN REGARD TO PROPOSED MAINE INSURANCE CODE

This Association will make particular comments only with regard to those chapters of the proposed Code which deal specifically with health insurance. We do, however, wish to indicate support for the comments made by the Life Insurance Association of America.

In the event this Association can be of any future help to the Commission, please do not hesitate to contact me.

Respectfully submitted,

John P. Dineen
Counsel

JPD:mm

DOMESTIC MUTUAL INSURERS

Further grandfather rights as to amount of surplus required for transaction of additional kinds of insurance.

To section 410, page 35, at line 4 add this additional sentence:

> "Except, that a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than $200,000*, may be authorized to transact such additional kinds of insurance as were then authorized by its charter; subject, however, to the same minimum required basic surplus amount as is applicable as to foreign mutual insurers under subsection 1, above, if the insurer is to transact life insurance ~~xxx~~ together with any one or more of property, casualty, surety, or marine & transportation insurances."

*This amount is arbitrary. The amount should be large enough to sustain the broad insuring powers, and is subject to further consideration by those concerned and by the Commission.

R.D.W.
12-16-68

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212 HA 2-6262

December 11, 1968

Mr. Kenneth P. McLeod, Chairman
The Commission to Prepare a
Revision of the Insurance Laws
Department of Insurance
Augusta, Maine.

Dear Mr. McLeod:

In accordance with the public hearings bulletin published by the Commission, we herein submit comments on the proposed Insurance Code of the State of Maine. We are attorneys serving Underwriters at Lloyd's, London, as their General Counsel in the United States.

Please refer to Section 731, pages 69 and 70. Subsection (3), credit for reinsurance proviso, recognizes and grants credit for reinsurance ceded to Underwriters at Lloyd's. Subsection (2), the authority subsection, inadvertently does not provide for ceding to Underwriters. To make the sections consistent, we respectfully suggest an amendment beginning at line 6 after the word "insurance" to read:

> " . . .; or in the case of a group of individual, unincorporated alien insurers, has assets held in trust for the benefit of its United States policyholders in a sum not less than $50,000,000, and is authorized to transact insurance in at least one state."

Please refer to Chapter 19, Surplus Lines. Section 2004 specifies Conditions for Surplus Lines Export.

In order to avoid the appearance of eliminating the right of an individual to contract outside the state, we respectfully suggest an amendment at page 77, line 4, after the word "procure" by the addition of the following:

". . . by a Surplus Lines broker . . ."

2004 Section 2004(4) might present a more reasonable criteria if it were modified to follow the approach in California and some other states. We would suggest that it be changed to read as follows:

"4. It is not available from a majority of insurers authorized to transact and actually transacting the particular class of insurance business in this state."

2005 Section 2005 in requiring the Commissioner's approval may impose an extra burden on the Commissioner's office. As far as we can ascertain, it is inconsistent with the approach of all other jurisdictions. We respectfully suggest consideration of a requirement that the affidavit be filed within a specified number of days (usually 30) after placement.

2101 Please refer to Chapter 21. This prohibition approach emulates the approach of most of the other states. As proposed, Section 2101 might be misread as a prohibition against the right of an individual, not acting as a broker or otherwise representing an insurer, from negotiating an insurance. We, therefore, suggest consideration of an additional subsection to read:

"2.F. Transactions involving contracts of insurance issued to any one or more industrial insureds. For purposes of this subsection, an 'industrial insured' is:

(1) An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified

insurance consultant; and

(2) An insured whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and

(3) An insured having at least twenty-five full-time employees."

The foregoing recognizes the complex problem faced by major insurance buyers in insuring major risks. It has been accepted over the last few years in more than twenty jurisdictions.

We hope to attend the hearings and will, of course, be pleased to receive comments on any point raised above.

In closing we would like to acknowledge that this draft is an outstanding piece of work.

Very truly yours,

LeBOEUF, LAMB, LEIBY & MacRAE

By Donald J. Greene

DJG:NM

TELEGRAM RECEIVED 12-17-68 9:00 a.m.

Newark N.J. Fred Schriever, Ass't. V.P. LIAA

Maine Insurance Department, Room 409.

Prudential unable to attend due to weather. Wish to oppose step-licensing

Memo to follow.

Aubry E. Jones
Prudential Ins. Co.

COMPARISON OF PRESENT COSTS TO ESTIMATED
AVAILABLE REVENUE FOR PROJECTED EXPANSION

Estimated Revenue		$300,000.00
Budget for July 1, 1968 to June 30, 1969 (Approp. 7210 & 7220)	$159,465.00	
Cost of License Division to be paid by Dedicated Revenue Account instead of General Fund	32,681.00	
Total estimated costs before projected expansion		$192,146.00
Estimated increased revenue available for expansion		$107,954.00

Factory Mutuals

1512
1513

Factory Mutual Legal Department

Factory
Mutual
System

Turks Head Building Providence, Rhode Island 02903 Telephone 401-521-2341

November 21, 1968

Mr. Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

Subject: Proposed Insurance Code

Dear Mr. MacLeod:

In accordance with the announcements set forth in the proposed insurance code for the state of Maine, a brief statement concerning one part of the code is made below.

This statement is made in behalf of the four mutual property insurance companies which are constituents of the Factory Mutual System. These companies, the first of which was organized in 1835 and the others pre-dating 1900, are direct-writing insurers providing coverage on high-grade industrial, commercial and institutional properties.

It is provided by Section 1512 that no person may act as an agent or broker or consultant unless licensed. An exception to this provides that no licensing is required of any regular salaried officer or employee, who devotes substantially all of his time to activities other than the solicitation of applications and receives no commission or other compensation depending upon the amount of business obtained. (Section 1513)

There is, however, no outright exclusion or exemption from licensing for salaried travelling representatives. The Factory Mutual Insurance Companies,

as direct writers, market insurance through salaried officers or employees. There are no agents employed and no commissions are paid. The Factory Mutual fieldmen are representatives of licensed companies in dealing with the public, and the companies, of course, are fully responsible for all their acts. It is, therefore, strongly felt that the proposed code properly should permit such salaried representatives of mutual companies, who receive no commissions, to solicit business in the state of Maine without the requirement of state residency or licensing. A number of other states do not impose any licensing requirement on salaried travelling representatives. (e.g., New York, Michigan, Montana, Texas, Wisconsin)

It is felt that if modification to the present proposed provisions were made, the public interest would continue to be served, and the citizens of Maine would in no way be prejudiced, nor would the administration of the Insurance Department be impeded. It is respectfully requested that careful consideration be given to the point here raised.

Very truly yours,

Norris L. McComb

Norris L. McComb
Associate General Counsel

NLM/jh

Health Ins Assn 12-18-68

Chapter 17 Agents Licences

Page 142
Section 1528

Should this section contain an additional category for Health Insurance only for those companies that write only Health Insurance. This comment may apply to other sections.

Health Ins. Assn. 12-18-68

Chapter 17 Agents Licences

Page 129
Section 1514

The Health Insurance Association agrees with the comment offered by ALC-LIAA on this section.

Health Ins Advis. 12-18-68

Chapter 5 General Requirements

Page 30
Section 386

It is recommended that this section be modified to take into account group coverage issued to Maine residents issued under an out of state group contract. It is further recommended that the proposal be modified to recognize an exemption of coverage issued by non admitted insurers where subsequent to issue the insured becomes a Maine resident and retains his insurance.

The NAIC adopted such exemptions at its most recent meeting.

Health Soc. Assn. 12-18-68

Chapter 7 Fees and Taxes

Section 601 ; Subsection 10 - Insurance Vending Machines

This subsection would require a filing fee and annual continuation license fee of $50.00 for each machine. At present there are fourteen states which have similar fee arrangements for vending machines, with the fees varying from $2.00 to $25.00. It is suggested that the proposed $50.00 fee per machine is inordinately high when compared with the fee arrangements in the other fourteen states.

JPD:mad

Estimated Revenue Vs Expenditure
of Insurance Department Under
the Proposed New Code

Estimated Total Revenue to be Received Under New Code if Adopted as Written			(1)	$300,000.00
Expenditures:				
Personal Services	(2)	$171,470.00		
All Other	(3)	45,505.00		
Capital Equipment	(4)	7,030.00		
Estimated Expenditures for Line-Budget Items		$224,005.00		
Department Contingency (20%)	(5)	$ 44,800.00		
Amount to be Repaid on Previous Loan	(6)	10,000.00		
Total Estimated Expenditures				$278,805.00
Balance remaining			(7)	$ 21,195.00

See attached sheets for explanation

Explanations

(1) This amount is a pure estimate of the total revenue that could conceivably be received by the department if the proposed code is passed. It does not take into consideration any reduction in the proposed fees and licenses that could occur prior to or at the passage of this code.

This amount does include estimated reimbursement for company examination.

(2) Under the present method of Line-Budgeting, personal services money is all moneys paid as salaries to present and proposed personnel.

Due to the retention by the department of all fees and license money, it would be necessary for the Examination Division to assume the responsibility of five (5) employees from the Administration Division.

Also, to modernize, improve and upgrade this Division it would be necessary to hire six (6) new employees. The largest number of new personnel would be in the area of company examinations. This would considerably reduce the necessity of hiring examiners from private firms who are paid at a much higher rate than State Personnel. It may be necessary to hire outside firms in the area of actuarial type exams.

It would also be necessary, in order to hire and retain qualified people for the examination, to upgrade present salary ranges in order to attract the right people.

(3) This amount covers all supplies, printing of licenses and reports, travel, (both in and out of State), all utilities and miscellaneous supply items.

(4) This amount covers all equipment items needed for the Examination Division and is based on just the necessary changes which will come due. These items are files, adding machines, calculators, typewriters and any other miscellaneous equipment items.

(5)&(7) These amounts can be explained as follows:

1. Possible company liquidations.

2. Possible company rehabilitation.

3. Any investigation work as provided by Sec. 222 Ch. 3 of new code.

4. Any type of schools or training for employees to upgrade the quality of personnel.

5. This department is in need of mechanization. At the present time the initial cost of this is unknown. As the State plans to formulate a Data Processing Department, it will be necessary for this Division to have funds available to assist in this formulation as each department will have to pay its fair share.

   The Insurance Department has requested money from the legislature for the installation of data processing equipment, but the area where mechanization is needed, would come under the Licensing section as the proposed code is written. Therefore, it would be necessary to pay for data processing from money received from fees and licenses rather than appropriated General Fund money.

6. This department must retain a respectable balance to allow for its future needs. Any charge, cost or expenditure to a dedicated revenue account must be paid by such revenue received and cannot be supplemented with general fund money.

(6) This amount represents a repayment of $10,000.00 to the State Contingent Account.

In April, 1968, it was necessary for this department to borrow $36,000.00 to perform the examinations that were legally due as there was not a sufficient balance in the examination account.

This borrowed money must be repaid at the rate of $10,000.00 per year beginning July 1, 1970.

NOTE:

We feel it is necessary to retain item (5) and item (7) so that it will not be necessary to borrow money when emergencies arise.

Mr. Chairman:

My name is Daniel W. Mooers. I am an attorney from Portland.

I would like to discuss with the Commission today the problems facing the insurance applicant which result from pre-insurance investigation and reporting. As I am sure all of you know, practically every person who applies for insurance--whether it be life, automobile, fire or any other type of insurance--is investigated by an independent reporting agency prior to the final issuance of the insurance policy. In the State of Maine--as in the rest of the nation--most of these investigations are done by either Retail Credit Company or The Hooper-Holmes Bureau, both of which maintain an office in Portland with branch offices in other parts of the state.

I think it unnecessary to go into all of the fine details of how these investigations are conducted, other than those which may be alluded to in my remarks.

From the outset, let me say that I do not dispute the fact that insurance companies may need the information gained through these investigations for underwriting purposes.

Underwriters say the information is necessary and for our purposes here today I will accept that fact. In this regard, I would also say that I am not concerned with the invasion of privacy, which even persons within the industry admit take place everytime an investigation is done. What I am concerned with, however, is the accuracy of the information obtained from these investigations. It is my belief that thousands of persons each year are denied insurance--or obtain insurance only at a higher rate--because of errors made in investigating and reporting on insurance applicants.

Let me cite to you a couple examples of what I consider inaccurate or possibly-inaccurate reporting. In Bethesda, Maryland, a suburb of Washington, D. C., two women who were partners in a real estate business applied for life insurance in connection with their business. Retail credit did a report and informed the insurance company that neighbors felt these two women were lesbians. The basis for this opinion was that they always lived behind closed shades, they had noisy parties, which, neighbors claim, only women attended and at which neighbors

thought they heard noises of "bodily contact". Neighbors also reported the women acted strange. They were denied the insurance. It is a long story what occurred after the report, but the case eventually wound up in court on a suit of libel and slander. The case was dismissed because companies like retail credit have a qualified privilege; and therefore can be sued only if the complaining party can show the inaccuracy was intentional or done maliciously. I corresponded with the attorney who handled this case; and he informed me that he was prepared to prove that the report was untrue. He also told me that the women were subsequently denied further life insurance, had automobile insurance canceled, were unable to obtain fire insurance on their home or camp, and were even denied insurance on a motor boat, all on the basis of this one report. (Wetherbee v. Retail Credit Co.)

What happened to these two women could happen to almost anyone, because of the method of reporting. In the Wall Street Journal, February 5, 1968, Mr. Frederick E. King, President of Hooper-Holmes Bureau, was reported to have stated in response to a reporter's question:

> "Homosexuality, Mr. King concedes, 'is one of the most difficult things to determine.' But he points out, 'If you have that sixth sense that something is wrong, you dig. The tipoff is their mode of living, their circle of friends and the organizations they belong to.' Is it fair to simply report the suspicions of neighbors? 'We won't say he's a homosexual,' Mr. King replies. 'We'll report, for example, that certain people feel he has homosexual tendencies.'"

I know of an individual in Portland who is also known very well by at least two members of this Commission who, in at least two reports done by Retail Credit Co., has been reported to have homosexual tendencies. I think if I mentioned this person's name, at least two of you would have to agree that this is not true. What the effect of these reports have been, I do not know.

Another example I was personally involved in as the investigator. I had to do an automobile report on a man that had recently moved into South Portland. As I was supposed to do, I interviewed two neighbors, both of whom informed me that this man had a son about 17 who drove his car. I reported this to the insurance company, and in turn they asked that this information be re-checked. It turned out, when I re-checked, that this information obtained from the neighbors was incorrect--the boy being

a nephew who had helped his uncle move and who drove his own car. In this case, the error was corrected--I do not know how many are not discovered.

At least one way inaccuracies occur is obvious, that of neighborhood investigation; but I think there are others, within the agency itself, which at least contribute to inaccurate reports.

One of these is the fact that each full-time investigator is expected to complete 15 to 25 reports a day. This includes not only investigating the case, but also typing a lengthy report. Since an investigator is paid for a complete report, it is not his typing time he skimps on. Part-time investigators are paid for each case they complete, again leading to rushing through investigating time.

Another cause is the pressure to discover and report derogatory information. These companies exist on their ability to show insurance companies that they can discover bad risks and thus save the insurance company money. Each investigator is expected to turn down or give a no recommendation on a certain number of all the cases

he handles. Records are kept on each investigator, the number of cases he handled, the number turned down, the number on which derogatory information was learned, etc., etc. Records are compared, and if an investigator does not meet his turn-down quota, he will be so informed.

Another internal matter is the gathering of incomplete information. For example, newspapers are clipped for such things as District Court cases, divorces filed, arrests made, etc. The difficulty here is that while the initial action may be learned, the outcome is not. For example, from the same Wall Street Journal article:

> "This practice can produce inequities. A woman in one Eastern city tells this tale: She ordered a rug. A carpet of the wrong color was delivered. The merchant refused to take it back and sued for payment. The suit was thrown out of court, but the woman's credit record showed only that she had been sued for nonpayment. As a result, her credit was cut off elsewhere.
>
> "It's impossible to get the disposition of a suit,' says Rudolph M. Severa, executive manager of the New York credit bureau. 'It would be extremely expensive.' Mr. Severa explains that each case would have to be looked

> up by researchers, and he says, 'Our members know they should draw no conclusion from the fact that a suit has been filed. It's up to them to check into it further.'"

Another is the inability of the individual to get his record or file changed if he suspects inaccurate information has been reported. Again from Wall Street Journal article:

> "There is one notable exception to the generally easy access--the person who wants to see his own record. Retail Credit won't even confirm that it has done a report on a person. This, Mr. Watt says, is to avoid lawsuits. If a person raises a question about his record, he is invited to write a statement about whatever may be bothering him, and, says Mr. Watt, 'we tell him if we did a report, we'll send the statement to anyone who asked about him.'"

As I am sure all of you know, these merchantile agencies, Retail Credit, Hooper-Holmes and others, are completely unregulated at the present time, although we may see related federal legislation in the future. By the same token, these agencies have an almost total immunity from private lawsuit because of the antiquated defense of qualified privilege.

If it is agreed that some regulation is needed in this area, I would like to suggest to the Commission some alternatives which it or some other governmental agency might consider.

The first and perhaps the fastest would be abolition of the qualified privilege. This in a sense would mean control by the public itself by the ability to sue for libel in the case of an incorrect report. This alternative might mean increased operating cost for the investigating agency, but they could always take out malpractice insurance like any doctor or lawyer--that is if they could get by the investigation and report. I might add that Retail Credit Co. has one of the best earnings records of any company in the country.

However, I believe there is action which could be taken by the Insurance Commissioner which could indirectly control these agencies. At the very least, regulation could be passed which would require that each agent inform the applicant, either verbally or by writing on the application, that an investigation may be done on his background habits, etc. This would perhaps, in the first instance, lead to more complete information on the application form and secondly, would make the applicant aware of the practice so that should he be denied insurance, he would at least know where to start inquiring as to the reason.

Another alternative would be to require the insurance company to inform the applicant of the exact reason he has been denied insurance or can obtain it only at an increased rate. As I understand the present practice, the applicant is told that he has been refused for underwriting reasons or some equally vague term. If he were told the exact reason, he would again have some place from which to start his inquiry.

Still another alternative, and one which is most appealing to me, is to set up within the Insurance Commissioner's office a department which would have the power to investigate and rectify complaints of individuals denied insurance because of reports of merchantile agencies. One way this might be handled could be as follows:

That when an adverse report is given and insurance is refused, the insurance company be required to write a letter to the applicant something like: Because of information received through our investigations, we must refuse you insurance for the following reasons: (Stating the reasons). In the same letter the company would be required to inform the applicant or the state department

that would handle any complaint the applicant might have. The applicant could then come to the Insurance Commissioner's office, discuss the problem with some person there and offer any proof he may have that the insurance company is wrong. The Insurance Commissioner could then require that a copy of the report obtained by the insurance company and any other pertinent information be given to him by the insurance company. An investigation could then be made, including the agency doing the report being obligated to turn over to the Commissioner the sources of the particular information. If the information were substantiated, that would be the end of the matter. If it were not substantiated, then the Commissioner could require both the insurance company and the reporting agency to correct its information. Perhaps, if necessary, the insurance company could be required to issue a policy. I might add that under this procedure, any doubt as to accuracy of information should unquestionably be resolved in favor of the applicant, a practice which does not appear to prevail today.

I urge you to take action in this area.

Thank you.

AMERICAN MUTUAL INSURANCE ALLIANCE
20 North Wacker Drive • Chicago 6, Illinois
Financial 6-5190

December 9, 1968

Mr. Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

Dear Mr. MacLeod:

We would like to thank you for the opportunity to comment on your September, 1968 draft of the Proposed Maine Insurance Code.

The American Mutual Insurance Alliance on behalf of its membership wishes to make the following comments:

1) Section 221 (1) provides for an inspection of insurers to determine their financial condition. The commissioner may conduct an examination as often as he deems advisable but must examine each domestic insurer not less frequently than every three years.

Section 59 of the present Maine Insurance Code provides in part "The commissioner shall, whenever he deems it necessary and at least once in every 5 years, examine ..." We suggest that the three year period for required examinations in the proposed code be revised to five years. We believe the three year required examination could pose an undue burden on the insurance department. Allowing the insurance department five years within which to examine the companies will relieve this burden.

2) Section 229 (1) - Administrative Procedures; Hearing in General - amend line 15 to read, "Except for hearings held under Chapter 25 (Rates and Rating Organizations), the commissioner may hold a hearing ..."

Chapter 25 has its own provisions for hearing and therefore should not be subject to Section 229.

3) Section 401 defines "Mutual" insurer. We would suggest the substitute of the following which we believe is more appropriate:

> "A mutual insurer is an incorporated insurer without capital stock, owned by its policyholders collectively, who have the right to vote in the election of its Directors."

4) We object to Section 409. We do not believe that fire and casualty companies should be allowed to write life insurance in the same company. We also believe a life company should not be allowed to write fire and casualty insurance in the same company. The only state allowing a combination fire, casualty and life company is Wisconsin however, a company in Wisconsin must maintain separate funds and accounting. To our knowledge, this Wisconsin provision has

never been used. We suggest that the following be substituted for Section 409:

> "An insurer which otherwise qualifies therefore may be authorized to transact any one kind or, any combination of kinds of insurance as defined in Section 704 through 709 of this chapter (Health, Property, Surety, Casualty, Marine and Transportation and Title Insurance), except that a reciprocal insurer shall not transact life insurance."

Correspondingly, Section 710 should be amended to read as follows:

> " A multiple line insurer may transact:
>
> 1) Any two or more kinds of insurance as defined in sections 704, 705,706,707,708, and 709 of this act (Health, Property, Surety, Casualty, Marine and Transportation, and Title insurance).
>
> 2) A life insurer may grant annuities and may be authorized to transact in addition only health insurance; but the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to the effective date of this act was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and health insurances and annuity business except, a reciprocal insurer shall not transact life insurance."

Should you not accept the above suggestions, we believe Section 410 (1), "Life, and any one or more of Property, Casualty, Surety, Marine and Transportation" should be clarified to not only allow a life company to write these other lines but to allow a fire or casualty company to write life insurance. These minimum requirements should be reciprocal.

5) Section 410 (1) (B) provides in part that an insurer must maintain policyholders surplus reasonable in amount as determined by the commissioner.

It is the legislature and not the commissioner who should determine what should be the financial requirements for insurers.

Also, Section 410 (1) (B) states, "In making any such determination the commissioner shall give due consideration to any applicable standards approved or adopted by the National Association of Insurance Commissioners ..." We know of no standards adopted by the National Association of Insurance Commissioners.

Therefore, we suggest deletion of Section 410 (1) (B).

6) Section 414 (1) provides that the commissioner may issue a certificate of authority, if he deems it advisable, to an insurer who has made the proper application and satisfies the requirements of this title.

If an insurer meets the requirements of this title and has made proper application, the commissioner should not have discretion in issuing a certificate of authority. We propose that Section 414 (1) be amended in part as follows:

> "... its policyholders in this state, the commissioner shall issue to the insurer a proper certificate of authority ... "

7) Under subsection 1 of Section 414, a sentence should be added to read, "The commissioner shall act upon an application for a certificate of authority within a reasonable period after its completion."

8) Section 417 (2) (B) provides for revocation of a certificate of authority for refusal to pay claims. This subparagraph is vague and lacks objective standards. We strongly urge the following amendment:

"Section 417 (2) (B) - With such frequency as to indicate its general business practice in this state:

a) Has, without just cause, refused to pay claims arising under coverages provided by its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to liability of an insured to such third person, or

b) With like frequency and without just cause, compels insureds or claimants in this state to accept less than the amount due them or compel them to employ attorneys or to bring suit against the insurer or such an insured to insure full payment or settlement of such claims.

Provided however, as a condition precedent to a revocation or suspension of the insured's certificate of authority under this subsection, there has been a prior determination that the insurer has engaged in an unfair method of competition or an unfair act or practice in the business of insurance under Section 2179 (2) of this title.

The following should be added as subsection (2) of Section 2179 of the proposed code:

"No insurer shall, without just cause refuse to pay or settle claims arising under coverages provided by its policies in this state and with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by (A) a substantial increase in the number of complaints against the insurer received by the Insurance Department, and (B) a substantial increase in the number of law suits against the insurer or its insureds by claimants, and (C) other relevant evidence."

Our proposed revision would limit the commissioner's powers within reasonable bounds whereas the proposed code section would have given the commissioner undefined and indefinable authority.

9) Sections 426 and 427 provide for the countersignature of policies. We believe that the modern trend, as evidenced in Oregon, is toward the elimination of all countersignature requirements. We recommend the elimination of countersignature requirements.

Should the above proposal be unacceptable, we would suggest the following:

Section 427 (7) provides that the countersignature requirements will not apply to:

"(7) Insurance issued by insurers not operating on an agency system in the solicitation of business."

"Agency system" has been given many definitions by various people. Therefore, we suggest subsection 7 of section 427 be amended as follows:

"Policies and contracts issued by insurers not operating through independent contractor agents compensated on a commission basis in the solicitation of business."

10) Section 1261 (1) provides in part, "Except as provided in subsection 2 below, ..."

There is no subsection 2 ?

11) Section 1507 (2) provides, "Service representatives are not required to be licensed as such, but shall qualify for and be licensed as an agent, resident or non-resident, as the case may be, as to the kinds of insurance to be transacted as a service representative."

We object to licensing service representatives as agents. You could have problems with countersigning by service representatives, etc. We suggest that the following be substituted for subsection 2 of section 1507:

"(2) No person shall in this state be, act as or hold himself out to be, with respect to subjects of insurance resident, located or to be performed in this state or elsewhere as a service representative unless licensed as such under this code. Application for a license as a service representative shall be made by the individual desiring a license, filed with the commissioner, accompanied by the applicant's fingerprints, and by the appointment of the employer insurer."

12) The proposed Maine Insurance Code does not contain a provision providing for suspension, revocation, or refusal of an agent's license for habitual delay in remitting premiums to insurers. We believe such a provision is necessary in order to provide equity. We suggest the following be inserted before Section 1539:

Failure to remit premiums: Notice; Suspension of license.

1) If within 30 days after the contractual due date of any premium received by him, any agent, broker or surplus lines broker fails to remit the premium to the insurer or agency to whom it is owing, the insurer or agency, as the case may be, shall promptly report such failure to the commissioner in writing.

2) The commissioner may suspend the license of any such agent, broker, or surplus lines broker so failing to remit, until the remittance has been made or the insurer or agency has filed with the commissioner a release of the indebtedness satisfactory to the commissioner.

3) The applicable procedures provided for in Section 1539 (suspension, revocation, refusal of license) of this act apply to the suspension of license under this section, except that the 12-month limit of suspension periods provided in Section 1539 of this act do not apply.

4) If the commissioner, by the admission of the agent, broker, or surplus lines broker, or by examination of the records of the agent, broker, or surplus lines broker, determines that the charged failure to remit is true, he may suspend the license without hearing."

13) Section 1616 (1) provides, "The commissioner may license as agent or broker a resident of another state or province of Canada otherwise qualified therefor, if a similar privilege is extended by such other state or province to residents of Maine."

If an agent or broker of Maine can be licensed in another state or province of Canada, we believe the agent of the other state or province of Canada should be allowed to be licensed in Maine. Therefore, we suggest that subsection (1) of section 1616 should be amended to read as follows:

"The ~~commissioner~~ shall license as agent or broker ..."

14) Section 2004 (4) provides "it is not available in any authorized insurer."

Surplus lines agents should be clearly required to make a diligent effort to place business with authorized insurers before resort to the unauthorized market. Therefore, we suggest that subsection 4 of section 2004 be amended to read, "it is not available in any authorized insurer after diligent effort has been made to place such insurance with an authorized insurer."

15) Section 2169 reads in part as follows, "Failure to comply with such an order of the commissioner shall be deemed a violation of this section."

To clarify what penalty applies, this sentence should be amended to read, "Failure to comply with such an order of the commissioner shall be deemed a violation of Section 2168 of this chapter."

16) Section 2412 (2) provides in part, "The commissioner may at any time, after a hearing and for a cause shown, withdraw any such approval."

This sentence should be amended to read, "The commissioner may at any time, after notice and hearing, and for good cause shown, withdraw any such approval."

17) Nowhere in Chapter 27 (Insurance Contracts) is there any provision for "Binders" which we believe is necessary. We strongly urge adoption of the following:

a) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of a policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

b) No binder shall be valid beyond the issuance of the policy with respect to which it was given .

c) This section shall not apply to life or disability insurances.

18) We note that Section 2905 has certain cancellation provisions for physical damage insurance policies. We believe it is in the public interest that reasonable automobile termination provisions be incorporated into the Maine Code Revision. Therefore, we strongly urge the incorporation of the attached "Model Termination Bill."

19) Section 3041 specifies a time limit for adjusting and paying fire losses. Although this section is contained in the present Maine Insurance Code, we believe it bars companies from making prompt payment of fire losses which exceed $1000. Therefore, we recommend the deletion of section 3041.

20) We strongly oppose the inclusion of section 3042 in this code revision. This provision is unreasonably burdensome in that it prohibits credit of dividends toward renewal premiums etc. Therefore, we strongly urge the deletion of section 3042.

21) Section 3477 (1) provides in part, " ... notice was given to the insurer, its directors or trustees, its officers, employees and its members, all of whom shall have the right to appear and be heard at the hearing."

We do not believe employees have the proper interest in this matter. We do not believe they should have the right to be heard at a hearing of this kind. Therefore, we recommend deletion of the word "employees".

22) Section 3477 (2) (G) provides in part, "of cash in an amount found to be reasonable by the commissioner but not in excess of 50% of the amount of his equity not so used for the purchase of stock, ..."

The only state that has a provision similar to the above is New Hampshire. We believe the underscored words allow for "milking" of policyholders and should therefore be deleted.

23) Section 3478 (2) provides, "Nothing in this section shall authorize the merger or consolidation of a mutual insurer with a stock insurer".
We strongly urge that mutuals and stocks be allowed to merge, no matter which may be the survivor. We therefore urge that subsection 2 be revised to read, "Mutual insurers and Stock insurers may merge under the appropriate provisions of sections _____ of this statute".

Appropriate merger provisions for stock and mutual insurers should be inserted.

24) We believe that the standards for disapproval of a merger as contained in Section 3480 (2) are vague. We urge that subsection (2) be amended to read:

2. The commissioner shall approve the plan and agreement unless he finds that it:

A. Is contrary to the law, or

B. Is inequitable to the policyholders of any domestic insurer involved in that it will result in a substantial reduction of the equity of such member without reasonably compensating benefits or advantages; or

C. Will certainly and materially reduce service to the policyholders of a domestic company or the protection of existing insurance policies of a domestic company; or

D. Would materially tend to lesson competition in the insurance business in this state, or would materially tend to create a monopoly as to such business.

25) Section 4356 (7) would allow the commissioner to inspect the affairs of any subsidiary, whether directly concerned with the insurance business or an ancilliary subsidiary. The commissioners generally have sufficient power over the insurance company. Also, the insurance company probably will not have the books or records of its parents or an ancilliary subsidiary. We suggest reference to the Model Holding Company Bill of the Industry Advisory Committee to the NAIC for appropriate provisions concerning the examinations of books and records.

26) We object strongly to Sections 2307 and 2303 (2). We believe that so-called "Equity rating" is inequitable and should be eliminated from the proposed Maine Insurance Code.

Other than the above objection, we wish to express our support for the rating law as outlined in Chapter 25 of the proposed code.

27) We note that the proposed Maine Code contains no provisions concerning Loss Reserves. We recommend that the following be inserted after section 922.

LOSS RESERVE: CASUALTY INSURANCE.

Section 1. As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the commissioner, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.

2. Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the commissioner may require the insurer to maintain additional reserves.

3. The minimum reserve requirements prescribed by the commissioner for unpaid losses and loss expenses incurred during each of the most recent 3 years for coverages included in the lines of business described in the insurer's annual statement as workmen's compensation, liability other than auto (B.I.), and auto liability (B.I.) shall not be less than the following: For workmen's compensation, 65 percent of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year; for liability other than auto (B.I.) and auto liability (B.I.), 60 percent of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year.

4. The commissioner may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

Sincerely,

Kenneth Nails
Legislative Bureau
KN:aj

Enclosure (1)

3367 Nonassessable policies; assessable, nonassessable liability

]. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to all its cash plan policies in force and may omit provisions imposing contingent liability in such policies currently issued upon compliance with the following requirement, notwithstanding any special law or charter previously enacted by the Legislature:

A. Surplus. The insurer shall have and maintain a surplus to policyholders, as determined by its last annual statement filed with the commissioner, of not less than $]00,000, for an insurer heretofore formed and transacting insurance and of not less than $200,000 for an insurer hereafter formed.

2. If such an insurer, after qualifying to issue a non-assessable cash premium policy, fails to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the requirements for a period of one year.

3. Notwithstanding the foregoing, a domestic mutual insurer may also issue assessment plan policies and assessable cash plan policies. Any assessment, special or regular, levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of the holders of policies subject to assessment, and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency. Such assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred and shall be for the exclusive benefit of the holders of such policies.

David Roberts

RESPONSE TO LIAA COMMENTARY ON PROPOSED MAINE STATE INSURANCE CODE

Chapter 7 — Fees & Taxes - pages 56 & 57
Section 601. Fee Schedule - no objection to suggested ammendment

Pages 59 & 60
Section 605. No concern to our committee

Chapter 17 — Agents, etc. - page 129
Section 1514. Exceptions to license requirement can see the reason for the suggested addition at line 13. However, suggest <u>further</u> addition to make sure that the activity of "enrolling individuals under such plans" is not construed to include <u>selling</u> the plan to either employer or employee. As now written the implication of the language is to encourage direct writing through the phrase "or otherwise assisting in administering such plans where no commission is paid for such services".

Page 130
Section 1514. Purpose of license; "controlled business" statement that "new life insurance agents always insure their close associates and relatives first" is not supportable.

Suggested increased limits are too high (50% or 66 2/3%)

Controlled business

Suggest instead alternative criteria for measurement of "controlled business" such as measurement by % of number of cases written if any single case represents over 25% of total volume or premium written in 12 months and provide judgmental determination by the commissioner within the "intent" of the law in event of disability. For example - add to Section 4 an item D - "Insurance written during a 12 months period when the Agent was totally disabled for more than 6 months of that period". And item E. "Insurance written during a 12 month period during which any sale to one individual or one group of individuals associated in the same business firm does not exceed 30% of the number of sales made by the Agent during that 12 month period".

Section 1520 - Page 135 - Line 18 - no objection

Section 1533 - Page 147 - Line 5 - no objection

Section 1673 - Page 164 - Line 13 - no objection

Section 1674 - Page 165 - disagree entirely
Substitution of word "may" for word "shall" in line 7 counters all objections stated by giving applicant a choice as to degree of initial study required before achieving ability to earn commissions.

Consultant

Chapt. 17 - Sub. III - Sec. 1676

Expand to prohibit the taking of both a "consultant's fee" and "commissions" on the same case by the same individual or organization.

Sub. IV - Sec. 1806

Remove this prohibition and substitute requirement that dually licensed Agent-Consultant must declare his relationship as "Consultant" to a client in writing with a copy to the Commissioner upon acceptance of the consulting assignment, such declaration to be revokable only with consent of the client and in consideration of no payment of any consultant fee. If any consultant fee has been paid to the consultant by the client at any time in relation to the purchase of insurance, the consultant should be prohibited from taking commission on the sale or any other sale of insurance related to the consultation for which the fee was paid, as suggested in proposed revision of Sec. 1676, and as provided in Sec. 1807.

Sec. 1807-1, line 23

Change to read "licensee under his (word added / consultant's) license".

Revise this paragraph in view of suggestion for change in Secs. 1676 and 1806.

810

5. a Domestic insurers heretofore formed under a special acts of the legislature, ~~to the extent that~~ where inconsistent with such special Act as heretofore amended.

Commission Fees

601 - Fees.

1) Domestic mutual fire, etc
$3.00 Examination fee

3 or 2 - Mr. [illegible] - Could you comply with endorsement? [illegible]

December 10, 1968

Memorandum -

Re: Section 2325 - Assigned Risks

We suggest editorial changes in this section. As it is presently set up, paragraphs 3, 4 and 5 are of general weight and would therefore modify paragraphs 1 and 2. It is obvious they are supposed to modify paragraph 2; whether they modify paragraph 1 is unclear. Moreover, paragraph 1 is silent about the creation of a "plan" saying only that "insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications to be subject to the approval of the commissioner."

It would be our suggestion to delete the figures 3, 4 and 5 from the start of the later paragraphs of this section, making them fall entirely under 2. This proposal will then separate the general permission of insurers to form a plan under 1 from its having to fall into the requirements of A, B, C and D under 2.

Should it be desired to apply the rules of 2 A, B, C and D to any agreements made by insurers, we suggest lines 16 and 17 of page 230 be changed to read "Such agreements and rate modifications to be combined in a plan which shall be subject to the approval of the Commissioner."

It seems to us that this change will correct some loose construction in this section.

Union Mutual — Investments

Memorandum to Mr. Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws

Subject: Proposed Insurance Code of the State of Maine

I respectfully request that the following sections of Chapter 13 of the proposed insurance code be modified as outlined below.

Section 1105 1. After the word "assets" found in the sixth line on page 90, the following language should be inserted:

> "excluding those invested pursuant to subparagraph 5 of this Section 1105."

Section 1105 2. Preferred or guaranteed stocks should be included under Section 1105 1 rather than under Section 1105 2.

Section 1105 5. I suggest that this section be reworded to read as follows:

> "Notwithstanding any other provision contained herein or elsewhere, an insurer may invest in the aggregate an amount up to but not in excess of 35% of its surplus as to policyholders if a mutual insurer, or 35% of its capital and surplus if a stock insurer, in all investments under the Section 1115 (stock of subsidiaries) of this chapter."

Section 1109 1. I suggest that the language contained in the parentheses following the word "obligations" found in line 19 on page 94 be deleted. I believe this language was intended to allow insurers to make 100% loans under certain circumstances, but the effect of this language is questionable. I suggest that the following language be used as a new Section 1109 2, and that the rest of the subparagraphs of Section 1109 be renumbered. The intent of the following language is to allow the making of 100% loans when a lease to a substantial company such as General Motors has been assigned to the insurer as security for its loan. The suggested new subparagraph should read substantially as follows:

> "Obligations secured by one or more leases, whether or not additionally secured by one or more mortgages,

provided the following conditions are met:

(a) The leases are assigned directly to the insurer and are noncancellable by either party except under provisions specified in the leases and designed to give adequate protection to the insurer's investment.

(b) The aggregate rentals due under all such leases are sufficient to provide (i) for all expenses (including taxes other than the borrower's income tax) of operation of the leased property during the initial term of such leases and (ii) for amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon.

(c) The leases make suitable provisions for continuation of adequate payments throughout the life of the investment.

(d) The lessees under such leases, or any corporation or instrumentality of government which has assumed or guaranteed the lessees' performance thereunder is such that its obligations would be eligible for investment by an insurer in accordance with the provisions of Section 1107 of this chapter or the aggregate net earnings of such lessees available for fixed charges, as defined in Section 1110 of this chapter, is at least equal to that required by Section 1109 1 of this chapter."

Section 1100 D. I suggest that the following words be deleted from lines 16 and 17 on page 97:

"and rentals for leased property"

Section 1115 1A. I suggest that this provision be reworded so that it reads as follows:

"In any business necessary or incidental to the convenient operation of the insurer's insurance business, or to the administration of any of its lawful affairs, or to the benefit of its policyholders;"

Section 1125 1G. I suggest that the following words be deleted from lines 23 through 26 on page 108:

"other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, hotel, motel, or club purposes."

Section 1132. I suggest that the following language found in lines 5 through 8 on page 113 be deleted:

"and shall be disposed of by the insurer under the applicable provisions of Sections 1133 (time limit for disposal of real estate) or 1134 (time limit for disposal of other ineligible property and securities) of this chapter."

James F. Keenan
Attorney for Union Mutual
Life Insurance Company

Investments

COMMUNITY LIFE INSURANCE COMPANY
2501 CONGRESS STREET ••• PORTLAND, MAINE 04102

December 10, 1968

Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

Dear Senator MacLeod:

On behalf of Community Life Insurance Company, a domestic stock life insurance company, I would like to present for the consideration of your committee, the following recommended changes in the proposed Insurance Code.

CHAPTER - 13 - PARAGRAPH 1105

We would like to suggest that this paragraph be amended to give realistic consideration to the economic circumstances of the recent past, present and the probable future.

The proposed law would require 60% of the insurer's assets to consist of cash funds or fixed return investments. We believe that this is not in the best interests of either the stockholders or policyholders. We submit that this investment law is an archaic and unrealistic burden to the life insurance industry. We do not believe that a qualified investment advisor whether to an individual, a fund or corporation, would not be able to operate in the best interests of his client under such restrictions.

The law, as proposed by the committee, is based on the economics of 1930. It certainly does not fit the economics of the past twenty years or that of the foreseeable future. An insurance company that invests the majority of its assets, and fixed obligations of government or commercial entities is only saved from economic chaos by the rule that it may take the ammortized value or market price whichever is higher, in the preparation of its statements. Yet, realistically, if a company were to liquidate such securities to meet an obligation, their value would be substantially less if they held them for any length of time.

It has been stated in authoritative journals, that if all insurance companies had to show their bond holdings at the market value, more than 57% would be insolvent.

Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine

The attached article from a recent issue of the Portland Evening Express indicates that the leading universities and colleges, either have or are in the process of changing their investment philosophy regarding endowment funds in the light of current needs and economic conditions. Certainly, the investment goals for endowment funds are very much like the goals for insurance companies and the change of attitude from fixed income and securities to common stock is a confirmation of the fact that now is the time to revise investment thinking.

On December 2, 1968, at the National Association of Insurance Commissioners Convention in Los Angeles, California, the report of the Industry Advisory Committee suggests: "Three major trends have impelled insurers to diversify their activity. The first is a long-term secular trend of inflation which has accelerated in the past two decades and has become acute since 1963. Continuing deterioration in the purchasing power of the dollar has quickened public interest in and the market for equity-based investments as a hoped-for hedge against inflation. The relative decline in the proportion of the savings dollar invested in life insurance has impelled life insurers to seek a more competitive posture vis-a-vis other investment and savings media by offering variable annuities and a complete financial service incorporating life insurance and equity participation. In the process, these insurers expect to enhance the rate of growth of their assets, to reduce the net cost of insurance because of increased investment return attributable to a larger investment in equities, to share in the growth of the American economy, and to strengthen their sales forces by providing diversified selling opportunities."

One interesing recommendation of the Sub-Committee was their recommendation to help alleviate the need for holding companies, and I quote: "Liberalization of investment laws to permit diversification by insurers outside the insurance field, the basic objective being to permit insurers, both stock and mutual, to acquire through the use of subsidiaries the freedom of diversification that a stock insurer can now realize through the formation of a holding company."

As an alternative to the suggested legislation for investments, we would like to suggest that the law be revised to require the stock life insurance company to have $500,000.00, or 25% of its assets, whichever is greater, invested in securities such as those described under paragraph 1105, and that the balance of its assets should be left free to be invested in securities given a value by the N. A. I. C. committee on valuation of securities.

Kenneth P. MacLeod, Chairman
Commission on Revision of Insurance Laws
Room 409, State Office Building
Augusta, Maine 04330

We believe, that this change, while giving a degree of safety, will give a company enough flexibility to protect itself from rising costs and market changes.

Very truly yours,

Neil J. O'Leary
President

NJO/af
enclosure

Colleges Investing More Endowments In Stocks

By Henry J. Taylor

PALO ALTO, CALIF. — Great Stanford University here has an endowment of nearly $200 million. But it is experiencing — and exemplifies — the hidden half Nelson that is twisting the arm of unsubsidized education throughout our country. Moreover, only such exceptional institutions have any sizable endowments at all.

A mere nine percent of 397 liberal arts institutions hold 83 percent of the endowment money. Out of a total $12 billion only 19 universities have available the income from $100 million or more — a sum less than the government spends each year on the Peace Corps. And even the best endowed, like Harvard with its world record investment fund of about $1 billion, are caught in a money squeeze as is Stanford.

THE COSTS OF everything keep going up, but nothing like college costs. Indiana University President Elvis J. Stahr has pointed out that while the cost of living has risen 20 percent in the last decade, student charges nationwide, primarily for tuition, have risen 80 percent.

The average University of Indiana student must spend $2,000 for a nine-month year there. This includes tuition, room and board, books, special fees and incidentals — all a necessary cost of college.

Moreover, if you have a baby in your family, that child will be ready to go to college in 1986. By then, at the rate the cost of education is increasing, it will cost parents an estimated $25,000 to send that child through a four-year college course.

I find here that during the past 10 years enrollment in California state colleges is up 397 percent and operating costs and capital expenditures are both up 260 percent.

Publicly subsidized institutions can offset most of the increased operating and expansion costs by tapping the taxpayers. But private institutions can only boost tuitions, already felt to be at almost-untenable levels.

During the past 10 years college and university budgets have increased at the average rate of 10 percent a year. During the next 10 years, in line with costs, college tuitions are expected to double to $4,000. Meanwhile, the average tuition covers only about one-third of what it costs a college to educate a student.

ENDOWMENT INCOME and contributions alike are falling further and further behind. In fact, although Yale is the world's third most richly endowed university, Yale has been forced to start committing the highly undesirable deed of spending some of her endowment principal. And Harvard made the grade last year only by deriving a full 37 percent of its 1967 income from government sources.

The indicated hope for survival is the endowments' purchase of common stocks. Stanford is a heavy stockholder, and Harvard, for example, now owns 275,000 shares of General Motors. The University of Rochester has increased its endowment fund's market value from $81 million to $346 million and made itself the fifth wealthiest university in the country chiefly through shares in Rochester-based Eastman Kodak and Xerox.

A U.S. Office of Education survey of 135 institutions found their portfolios now average 54 percent in common stocks compared to 38 percent in 1950. Some show as high as 80 percent, which seems the ceiling, and IBM is the largest holding, followed by General Motors and Standard Oil of New Jersey.

THE ISSUE ITSELF rather than the duration it is held constitutes the essence of risk. Holding something for years on end doesn't necessarily constitute a conservative investor, nor do purchases and sales within reasonable times mean a speculator. Buying a stock for $20 and selling it for $40 yields the same gain after six months as if it were held for years, except that this releases the capital for reinvestment in another issue in which the buyer can hope to repeat the success. And, of course, educational institutions pay no income or capital-gains tax and thus need not be influenced even by the six-months period. The average turnover rate of their portfolios runs about 5.5 percent a year.

A Boston Fund survey finds that the average market yield is only 3.8 percent. But, faced by inflation, fund trustees are clearly subordinating yield to a goal of capital gains.

Here at Stanford and elsewhere this dominates today's educational endowment thinking while institutions try to extricate themselves from the pit into which costs and expansion have hurled them.

2609 (2) & (3)

Union Mutual Life Insurance Company

December 10, 1968

To the Commission on Proposed Changes
in the Maine Insurance Code

Gentlemen:

This document will supplement our verbal comments given at the hearing held on December 10, 1968. While our company is strongly in favor of adding to the Insurance Code a section specifically authorizing coverage on Professional Association groups, we feel that the suggested section 2609 of Chapter 31 should be modified.

As it is currently written, section 2609 requires that the policy cover 75% of the eligible individuals. Our experience with this type of group, (in areas where this requirement is not present), has shown us that it normally takes several years before 75% of the eligible members will apply for insurance. In some groups, this figure is never obtained.

In order that this section have more practical use, we would suggest that a clause be added that would allow an insurance company to underwrite this type of group using either the 75% enrollment requirement or evidence of insurability. The same choice that is offered in section 2604. To accomplish this we would suggest the following change in contents:

Section 2609, Paragraph 2

2. The premium for the policy shall be paid by the trustees wholly from funds contributed by the association, or partly from such funds and partly from funds contributed by the insured individuals or by funds contributed by the insured individuals specifically for their insurance. The number of individuals covered by the policy must exceed 75% of the eligible individuals, unless the policy reserves to the insurer the right to require evidence of individual insurability ~~if less than~~ 75% of the new

entrants become insured. A policy on which no part of the premium is to be derived from funds contributed by the insured individuals specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Section 2609, Paragraph 3

3. The policy must cover at date of issue at least 100 individuals.

We appreciate the opportunity to present our views to the Commission.

Sincerely,

Robert L. Roberts
Vice President, Group

RLR/lt

Proposed

Maine Insurance Code

Chapter 35 – Groups/Blanket Health Ins.

Page 336

§ 2808. Other groups

To permit the issuance of groups health insurance contracts to groups which the Commissioner finds are substantially similar to groups authorized by the preceding sections, it is suggested that a new sentence be added in line 22 to read:

"A group health insurance policy may be issued to cover any other group which in the discretion of the commissioner is substantially similar."

LIAA/ALC

Proposed

Maine Insurance Code

Chapter 35 - Group/Blanket Health Ins.

Page 331

§ 2804. Employee groups

To permit retired employees to be included for coverages under employee groups, add the following sentence in line 25 before the word "No":

"The policy may provide that the term "employees" shall include retired employees."

LIAA/ALC

Proposed
Maine Insurance Code

Chapter 35 - Group / Blanket Health Ins.

Page 330
§ 2802. Group Health Insurance Required

To provide specifically for dependent coverage, it is suggested that a new paragraph be added to § 2802 to read:

"— Any policy of group health insurance issued pursuant to sections 2804, 2805, 2806 and 2808 may include coverage for members of the family or dependents of such groups of persons."

O.K. P.O.

To provide for continuation of coverage for dependents after the death of a person in any insured group, it is suggested that a new paragraph be added to § 2802 to read:

"—. Any group health insurance policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical or surgical services for members of the

O.K. P.O.

Page 330, § 2802 (cont'd)

family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

LIAA/ATC

MAINE BONDING & CASUALTY CO.

Sec. 923

INTER-OFFICE MEMORANDUM

Assets & Liabilities

December 6 1968

TO Frank R. Fowles, Jr., President

FROM R. C. Byram, V. P. & Treasurer

SUBJECT Proposed Insurance Code #923 - Unearned Premium Reserve

COMPANY

The suggested code reads as follows:

1. As to property, casualty and surety insurance, the insurer shall maintain an unearned premium reserve on all policies in force.
2. Except as provided in Section 924 of this chapter as to Marine and transportation risks, the unearned premium reserve shall be equal to not less than 50% of premiums in force after deduction of applicable reinsurance in solvent insurers.

For many years, the insurance industry operated on a fractional basis for the calculation of unearned premiums. This was desirable before the days of the computer because of difficulties in computing the reserve. However, as computers have come to the forefront, it became apparent to both company management and state administrative authorities that fractions often gave a completely incorrect picture. Because of this, a more nearly scientific system evolved. It is now common practice in the insurance industry for computers to calculate the unearned premium by dividing the one year term into 24 periods, two year terms into 48 periods, three year terms into 72 periods and so forth. This results in a more nearly accurate liability to take

care of the unexpired term of the policies in force.

It also goes without saying that any company that writes a higher proportion of its total business in the first six months of the year, would be inadequately reserved on the basis of the proposed new insurance code. We think particularly of the fact that automobile business written in the state of Massachusetts is effective on January 1 of each year and, therefore, 50% should not be unearned 12/31. We also feel that the scientific basis (so called) is more accurate from the standpoint of internal statistics and gives a more reliable result of the underwriting experience of each company. Some of the larger companies have refined this particular formula so that it is on a daily basis. We also believe that this new law would damage companies who maintain premiums in force and unearned premiums by each insurance agency. We ask these questions:

(1) If there is a deficiency in the unearned premium because of this paragraph, would it go into the annual statement under Statement of Income, Page 4., thus requiring adjustments between lines of business and also perhaps insurance agency experience, contingent commissions, etc. to balance to net income

(2) or would it be entered as a surplus adjustment under the Capital and Surplus account on Page 4?

MEMO TO: Frank R. Fowles, Jr., President
RE: Proposed Insurance Code #923 - Unearned Premium Reserve

(3) Would not this provision require a different financial statement to the Maine Insurance Department than to other states permitting the pro rata method for computing unearned premium reserves?

(4) Would IRS accept this change in determining earned income?

We are not opposed to having the state of Maine lead the way in any activity that will be beneficial to our industry, particularly in strengthening accounting regulations. We believe, however, that this provision will complicate the financial statement unnecessarily because the prevailing practive measures the unearned premiums accurately.

We have reviewed the statements of twenty-five companies picked at random from both the stock and mutual field (both large and small) and discovered that 15 of the companies obviously do not follow the 50% rule for reserving unearned premiums at this time. The 10 companies whose unearned premium reserve exceeds 50% of their insurance in force, do not necessarily use the 50% method, but instead may have their business distributed more heavily in the last part of the year. In the overall picture, the fifteen companies would have come out with a nation wide reduction in surplus in excess of $69,000,000.00. In the fifteen companies, none of the adjustments would have effected the

MEMO TO: Frank R. Fowles, Jr., President
RE: Proposed Insurance Code #923 - Unearned Premium Reserve

solvency of the insurer, but it would be an extra, and in our opinion, unnecessary step, in insurance financial reporting.

We respectfully suggest that the Commission take into consideration a change of item 2 of the above mentioned code to read, "except as provided in Section 924 of this chapter as to Marine and Transportation risks, the unearned premium reserve shall be not less than the pro rata reserve calculated on the unexpired premiums in force as of statement date after deduction of applicable reinsurance in solvent insurers."

This wording does not prohibit any company from increasing its unearned premium to 50% of its business in force if it so desires.

Signed _____
Robert C. Byram, V.P. & Treasurer

An agreed text - Fowles & Perkins

SECTION 1106

In paragraph 2 amend the first sentence to read as follows:

"2. The insurer shall not invest in aggregate amount over the amount of its surplus as to policy holders plus 25% of that surplus in all investments eligible under the following sections of this chapter:
. . . "

EXPLANATION

Mr. Fowles of Maine Bonding Company and Mr. Perkins, counsel for the Maine Association of Mutual Insurance Companies join in the above proposal for the following reasons:

A review of Bests A & A indicates that the average for 804 stock fire and casualty companies is 94.4% and for 333 mutual fire and casualty companies , 55.6%, with individual companies ranging as high as 135%. At least one of the Maine companies is in the area between 80% and 90%.

We believe that the trend of this ratio has been upward depending upon the size of companies and conditions in the market place. It is subject to considerable change and development over the years.

As has been mentioned by various speakers during these hearings, there are periods when the so-called fixed investments bear poor returns and have limited marketability, so that comparably, sound common stock investments are advantageous.

We have in mind that it is difficult to change restrictions of this nature once they are placed upon the statute books. We feel that the above provision is a sound limitation leaving room for prudent growth and development.

In contrast, the recent recodification in Delaware provided no regulation of casualty and fire companies in this area.

§1128 Special Investments: Separate Accounts

The amounts allocated to each separate account established by the ~~insurance company~~ insurer pursuant to section 2537 (separate accounts) of this Title, together with any accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in the written agreement without regard to any requirements or limitations prescribed by this chapter; except, that to the extent that the reserve liability of the ~~insurance company~~ insurer with regard to (1) benefits guaranteed as to principal amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this chapter. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the ~~insurance company~~ insurer.

December 10, 1968

Memorandum -

Re: Section 705, Page 61 - Property Insurance Defined

The definition of property insurance is broad enough to include fire, inland marine, extended coverage, allied lines and so on. Later references in the rating law speak of fire and inland marine, particularly Section 2302. We suggest that consistency be attained by using the term "property insurance" throughout for general terminology such, for instance, as the general subject of the rating law.

To bring uniformity between paragraph 705 and 2302, we suggest that consideration be given to revising 2302 c. to read "Property insurance on risks located in this state."

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

(Preliminary Draft of September, 1968)

PROPOSALS FOR AMENDMENT AND COMMENTS

SUBMITTED BY

AMERICAN INSURANCE ASSOCIATION

December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 3 - THE INSURANCE COMMISSIONER

Section 206 - DEPUTY COMMISSIONERS

At page 5, line 12 delete the period "." after the word "commissioner" and insert " or during the absence or disability of that officer".

Comment:

Under Section 210 the commissioner may delegate his authority. It is possible he may become disabled and be unable to make such delegation. There would be an undesirable hiatus with no one available with authority to function. The added language taken from the present law, would take care of this situation.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 3 - THE INSURANCE COMMISSIONER

Section 209 - PROHIBITED INTERESTS, REWARDS

On page 6, line 17 insert the words "he is" before the word "entitled".

Comment:

This is a mere editorial change.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 3 - THE INSURANCE COMMISSIONER

Section 221 - EXAMINATION OF INSURERS

On page 12, line 11 delete: "except as otherwise required by the commissioner".

5

Comment:

Examination should be confined to the United States operations of an alien insurer. The worldwide operations of an alien insurer should not be subject to possible fishing expeditions by Maine officials.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 3 - THE INSURANCE COMMISSIONER

Section 225 - EXAMINATION REPORT - CONTENTS - PRIMA FACIE EVIDENCE IN CERTAIN PROCEEDINGS

Delete subsection 2 on lines 23-28 on page 15.

Comment:

This provision is inconsistent with Section 226, subdivision 6 which provides that a report when filed in the department shall be admissible in all proceedings.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 3 - THE INSURANCE COMMISSIONER

Section 226 - EXAMINATION REPORTS - DISTRIBUTION, HEARING; AS EVIDENCE

At page 16 line 11 delete the (.) period after the word thereon and insert "and the report shall be confidential as provided in Section 227."

Comment:

The change recommended is to assure that the "confidential" provision applies not only to the commissioner, but also with respect to the other officers named in this subdivision.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 5 - AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 420 - GENERAL CORPORATION LAWS INAPPLICABLE TO FOREIGN INSURERS

In the title of this section and in line 20 on page 44 insert after the word "foreign" the words "or alien".....

Comment:

This is designed to clarify what is no doubt intended, namely, that the general corporate laws should be inapplicable to "outside" insurers.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 5 - AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 427 - RESIDENT AGENT; COUNTERSIGNATURE LAW; EXCEPTIONS

At page 50, line 5 delete:

"building or constructruction project: and substitute therefor the word "contract".

Comment:

The purpose of the change recommended is to broaden the exemption of bid bonds from the countersignature requirements to include supply contracts. The recommended language is a common provision in modern insurance codes.

Actually, bid bonds develop practically no premium at all. There is a $5.00 charge for all bid bonds written for contractors for one entire year. Countersignature requirements impede the facility with which bids can be submitted by the contractors. Our modification is consonant with the intent of the subsection and merely broadens its scope in line with the most recent legislative enactments on this subject.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

Chapter 11 - ASSETS AND LIABILITIES

Section 923 - UNEARNED PREMIUM RESERVE

On line 29, page 76 delete the words "not less than 50% of" and substitute therefor: "the unearned portions of gross".

At the end of the sentence, on line 31, page 76 delete the (.) period and add: "computed on an annual, monthly or more frequently pro rata basis".

As thus amended subsection 2 would read as follows: "Except as provided in section 924 of this chapter as to ocean marine and transportation riks, the unearned premium reserve shall be equal to the unearned portions of gross premiums in force after deductions of applicalbe reinsurance in solvent insurers, computed on an annual, monthly or more frequently pro rata basis.

Comment:

The purpose of the change is to eliminate the proposed minimum reserve requirement. Reserves computed on a monthly pro rata basis are more accurate than those computed on a monthly basis and can amount to more or less than reserves computed on an annual basis, depending on when the business was booked and the increase or decrease in premium volume during the year in question. No minimum reserve on property and casualty lines of business can be justified, and certainly not one computed on the least accurate basis -- the annual basis -- as is proposed in the draft.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 15 - ADMINISTRATION OF DEPOSITS

Section 1261 - LEVY UPON DEPOSIT

On line 30, page 120 there is a reference to "subsection 2 below".

Comment:

This apparently is some sort of typeographical error as this draft does not contain a subsection 2 of section 1261.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 17 - AGENTS, BROKERS, SOLICITORS AND ADJUSTERS

Section 1509 - "ADJUSTER" DEFINED

Subsection B -

On lines 28 and 32 of page 126 should be recast to read as follows:

"Salaried employees of an insurer or of an adjusting firm owned or controlled by insurers, or of the managing general agent of an insurer".

Comment:

The exempt status of salaried employees of an insurer is recognized by the proposed language. The additional exemption suggested is designed to exclude from the licensing provisions not only salaried employees of insurers but additional staff people of firms such as General Adjustment Bureau. In addition, there is deleted from this subsection the requirement that the employer file with the commissioner in advance written notice of the employee's name and address and authority to adjust. This is a rather novel requirement and one for which there appears to be little need or justification. Salaried employees of insurers performing adjustment functions may come and go and there is little to be gained from requiring such filed information as a condition of exemption from the definition of "adjuster".

The commissioner's overall authority over the insurer is adequate to assure supervision over the adjustment functions of its salaried employees.

American Insurance Association
December 6, 1968

[Corrected page]

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 17 - AGENTS, BROKERS, SOLICITORS AND ADJUSTERS

Section 1509 - "ADJUSTER" DEFINED

Delete from Subsection C on page 127 the following lines 2 through 4 "as to whom the insurer has filed with the commissioner in advance of written notice of the agent's name and address and authority to adjust".

Comment:

Once a resident agent is duly licensed that should entitle him to perform all appropriate functions under his license. There should be no additional requirement imposed upon the insurer as a precondition to performance or adjustment functions for it.

American Insurance Association
December 6, 1968

1804

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 17 - AGENTS, BROKERS, CONSULTANTS AND ADJUSTERS

SUB-CHAPTER IV - INSURANCE CONSULTANTS

Section 1804 - CONSULTANT'S BOND

At page 170, line 15 delete the words "or unlawful".....

Comment:

This phrase is vague and could possibly be interpreted to require the bond to include indemnification for torts.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 17 - AGENTS, BROKERS, SOLICITORS AND ADJUSTERS

Section 1858 - NON-RESIDENT ADJUSTERS; PROCESS; SPECIAL CATASTROPHE LOSSES

On line 14, page 175 insert after the word insurer: "or of an adjusting firm owned or controlled by insurers".

Comment:

In a catastrophe situation employees of adjustment firms such as General Adjustment Bureau should be permitted to assist in the adjustment of catastrophe losses without the requirement of licensure.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 19 - SURPLUS LINES

Section 2007 - ELIGIBLE SURPLUS LINES INSURERS

Subsection 2 -

On page 178, delete the words "or that is ineligible under this section." on lines 24 and 25. End the sentence after the word "financially" on line 24.

On page 178, lines 26 through 32 and lines 1-6 of page 179 should be deleted.

Comment:

This subdivision requires the commissioner to establish a list of surplus lines insurers deemed by him to be eligible for the placement of such surplus lines coverage. The subdivision specifically provides that this requirement does not impose upon the commissioner the duty of examining the actual financial condition or claims practices of any unauthorized insurer.

It is submitted that such "white list" is unwise and despite disclaimers to the contrary, susceptible of misinterpretation and mis-reliance. The mere fact that a list is prepared by the commissioner implies official sanction. It is quite obvious this subsection does not impose upon the commissioner any duty to assure that a listed eligible surplus lines insurer meets any particular financial or claims practices standard. Absent such affirmative duty, the insurance buying public should not be placed in a position where it can be misled to its possible detriment.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 19 - SURPLUS LINES

Section 2017 - ANNUAL REPORT AND TAX

On line 19, page 184 delete "2%" and replace with "3%".

Comment:

The surplus lines insurer can avoid a multitude of taxes and fees and regulatory restrictions by failing to do business on an admitted basis. It is submitted that avoidance of state regulation gives the surplus lines carrier a competitive edge. Thus, we feel that the tax burden ought to be equalized by requiring the payment of a greater premium tax on such lines. The purpose is to equalize the total tax burden since the non-admitted carrier does not have to license its agents, pay annual statement fees, company license fees, etc.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 21 - UNAUTHORIZED INSURERS - PROHIBITION, PROCESS AND ADVERTISING

Section 2101 - REPRESENTING OR AIDING AN UNAUTHORIZED INSURER PROHIBITED

On page 188, add a new subsection F reading as follows:

Transactions in this State relating to a policy of wet marine and transportation insurance, ~~issued~~ or to be issued, outside this State."

Comment:

Wet marine and transportation insurance is exempt from the surplus lines law and consistently also should be exempt from related provisions such as Section 2101. Wet marine and transportation insurance is customarily placedby experienced marine brokers and agents and such insurance may attach to risks at any place in the world and at any time. Marine underwriters will not always be in a position to know the exact route of a shipmentnor in most cases is it possible for the insured to impart this information in advance to marine underwriters. It is important, however, for the protection of insureds that the marine underwriters be permitted to make inspections and surveys and adjustments under marine policies wherever the risks may be found and without fear of violating local regulations.

A wet marine exemption of this kind is to be found in the recently adopted unauthorized insurance and surplus lines laws of Iowa (Iowa Unauthorized Insurers Act of 1967), Michigan (MSA §24.1402 (2)) and New Jersey (N.J.S.A. §17:22-6.37).

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 23 - TRADE PRACTICES AND FRAUD

Section 2172 - FICTITIOUS GROUPS PROHIBITED

Delete entire section.

Comment:

Arbitrary restrictions, such as prohibition of so-called fictitious groups, are undesirable in that they inhibit experimentation in the merchandising of insurance.

This section is extraterritorial in that it would prevent the execution of group contracts outside the State as to Maine risks.

It is our view that maximum scope should be given to experimentation and innovation in marketing practices and it is a disservice to the regulator, the industry and most of all the insurance buying public, to put a damper on efforts to modify existing marketing practices.

American Insurance Association
December 6, 1968

PROPOSED INSURANCE CODE OF THE STATE OF MAINE

CHAPTER 25 - RATES AND RATING ORGANIZATIONS

Section 2315 - STAMPING BUREAU

On line 22, page 222 after the word "any" insert the word "fire".

Comment:

While stamping procedures are appropriate to fire policies, they traditionally have no place in the casualty insurance field.

The stamping bureau would be cumbersome, expensive and unnecessary in the mass casualty lines.

While this section does not mandate the establishment of such a stamping bureau, it is submitted that its permissive scope should be narrowed to assure that it is applicable only to fire rating organizations.

American Insurance Association
December 6, 1968

1518
1519

Amend Section 1518 "Application for license"
line 13 to read as follows:
"(fee schedule) of this Title, and a copy of or suitable
credit and investigation report relating to the applicant
from a recognized established independent investigation
and reporting agency, or the cost of such investigation
if applicable. . . . "

Page 132 line 32 to strike ["an imprint of the applicant's
Page 133 fingerprints and"]

Sec 1519 Investigation: Amend to add new
sub-section 3 as follows
"3. If, as a result of this investigation, the
Commissioner deems it advisable, he may require
an imprint of the applicant's fingerprints."

Respectfully submitted

David F. Watson CLU
Maine Assn of Life Underwriters

PROPOSED MAINE INSURANCE CODE

(Comments of INA)

Section 221(1) (pps. 11-12) - This section requires the examination of domestic insurers not less frequently than every three years.

Comment: It should be noticed first that this section provides full power for the Commissioner to examine any domestic insurer at any time. It has become apparent in states such as Delaware and Pennsylvania that mandatory examinations occupy the attention and concentration of Department regulatory officials which might better be spent in areas of immediate concern because mandatory examinations often involve companies whose operations are not a matter of concern to the Commissioner. Too frequent examinations result in substantial costs to the insurer which should be avoided where such examinations are not necessary. At the same time, of course, there are substantial arguments justifying examination at reasonable intervals. With this in mind, both Pennsylvania and Delaware in recent changes have lengthened the time intervals between regular examinations.

Recommendation: We would recommend that the five-year interval found in the new Delaware code be incorporated in this section.

Section 229 (pps. 18-19) - This section of the law provides for administrative hearings. As such, it involves certain duplications with sections in Chapter 25 relating to rates and particularly to Sections 2319 and 2320.

Recommendation: It would appear desirable to limit the application of Section 229 so that it would not apply to Chapter 25 in order to avoid any possible confusion between the two sections.

Section 235(2) (p. 25) - This section requires the Commissioner to make his order on a hearing within 15 days following the hearing.

Comment: The time is too short. It not only works a hardship on the Commissioner but would result in decisions prejudicial to the parties involved. The Commissioner should have time to review the record if he so desires.

Recommendation: The time period should be extended to at least 30 days. Personally, although there is some danger of unreasonable delays, we would not object to general language requiring a decision within a reasonable time.

Section 401 (p. 28) - This section defines mutual insurers.

Comment: The section does not contain language found in Nevada and Delaware recognizing the legality of at least one prominent mutual type insurance company which has operated for over 200 years on a somewhat different basis.

Recommendation: Add the sentence found in Nevada to the section, reading:

"This definition shall not be deemed to exclude as 'mutual' insurers certain foreign insurers found by the commissioner to be organized on the mutual plan under the laws of their states of domicile, by having temporary share capital or providing for election of the insurer's governing body on a reasonable basis."

Section 407 (p. 31) - This section prohibits ownership and control of an insurer by any government or governmental agency.

Comment: At the recent meeting of the NAIC Commissioner Apodaca raised the question of whether or not federal riot reinsurance was properly considered admitted insurance and everyone seemed to agree not only that it was but that it should be so considered. We do not know whether this section could be interpreted to have a contrary result but feel that it might well be reviewed from this standpoint since it is uniform language found in many states.

Section 427(7) (p. 50) - The exception contained in this subsection is new and provides that the countersignature laws shall not apply to insurers not operating on an agency system.

Comment: We object strongly to any such exception not only because the constitutional justification for the countersignature law makes irrelevant whether or not a company operates through agents but also because we object strenuously to regulatory provisions which distinguish between companies which use agents and those who do not.

Recommendation: This exemption should be removed.

Section 710 (p. 68) - This section recognizes the legality of full multiple line powers.

Comment: We cannot pass this section without taking the opportunity to congratulate those who drafted it on their willingness to incorporate a concept which we so long have believed to be in the public interest.

Section 1507(2) (p. 125) - This subsection would appear to require that service representatives be licensed as resident or nonresident agents.

Comment: Such a requirement seems unusually restrictive. Also, we do not understand how it relates to requirements of the law that an agent be a resident and maintain an office within the state with copies of records of transactions maintained there which would appear to be required in addition to the records maintained by the resident agent with whom the field representative was dealing. We are not sure that the answer to the question of whether or not a field representative licensed as a non-resident agent could work with a general license agent within the State of Maine in soliciting, negotiating and effectuating insurance. If not, it would create a severe hardship, particularly for those companies who did not maintain regional offices within the State of Maine.

Recommendation: Delete subsection 2 from Section 1507.

Section 1513 (pps. 128-9) - This section contains an exemption to the agents' licensing requirement laws recognizing that persons performing administrative or clerical services in general do not have to be licensed agents.

Comment: We have no question with this section, but it should be studied in relation to Section 1614 since it would appear under the present language that the latter section would prohibit the payment of any form of compensation for such services as are permitted under Section 1513.

Recommendation: This problem should probably be treated under Section 1614 but it is mentioned at this point for the purposes of pointing out the problem. Of course unless some adjustment is made, the prohibition in Section 1614 would have the practical effect of making Section 1513 a nullity, which does not appear to have been intended.

Section 1603 (p. 155) - This section requires that a person must be a resident of Maine in order to be licensed as a resident agent.

Comment: This should be considered in relationship to Section 1507(2) requiring that a service representative be licensed as a resident or non-resident agent. See comments under Section 1507.

Section 1610 (p. 159) - This section requires a resident agent to maintain complete records of transactions under his license and the previous section required that these be maintained within the State of Maine.

Comment: Again this requirement should be considered in analyzing the necessity for the requirement in Section 1507(2) that a service representative be licensed as a resident or nonresident agent.

Section 1614 (p. 161) - This section prohibits the payment of any form of compensation to anyone for soliciting, negotiating or effecting a contract of insurance.

Comment: This section makes no allowance for compensation to persons excepted from the requirements of license found in Section 1513. As pointed out in the comments under 1513, the section becomes a nullity in practice unless some provision is made permitting compensation.

Recommendation: Add a provision to Section 1614 exempting persons referred to in Section 1513.

Section 2004(4) (p. 177) - This subsection requires as a condition of placement with an unlicensed insurer that the insurance sought not be available in any authorized insurer.

Comment: We question whether or not this provision is too strong. Furthermore, it seems inconsistent with the provision found in Section 2006(1), on the same page, which recognizes that insurance may be placed with unlicensed insurers when there is not a "reasonable or adequate market".

Section 2017(1) (p. 184) - This provides for a surplus lines tax on business placed through surplus lines brokers in the amount of 2% of the net premiums.

Comment: The amount of the surplus lines tax should be sufficiently larger than the premium tax paid by licensed companies to allow for the additional taxes, charges and fees made on licensed companies. Furthermore and of much greater importance, this taxing provision does not include a tax on transactions of unauthorized insurers when placed directly by the insured with such insurers. Such a tax currently exists under the laws of most states. Omission of such a tax creates an unfair competitive advantage prejudicial to licensed insurers in competition with unlicensed insurers. Also, it encourages Maine residents to avoid doing business with Maine producers and to go directly to other markets, such as Boston, for their insurance.

Recommendation: The amount of the surplus lines tax should be reviewed to determine whether or not it is reasonable in relation to all taxes, licenses and fees paid by licensed companies, and second, the law should be amended to include an equivalent premium tax to be paid by the insured in the event that he places business through an unlicensed insurer without the services of a surplus lines broker.

Section 2172 (p. 208) - This section provides for a prohibition against fictitious groups.

Comment: This section is new and controversial. It incorporates concepts inconsistent with current trends in marketing property and casualty insurance.

Recommendation: We object strongly to its inclusion and ask that the law be left in its present form. Adequate regulation of the abuses in this area can be supported under the rating law without the need for this particular section.

Section 2315 (p. 222) - This section contains a provision permitting rating organizations to have stamping bureaus.

Recommendation: Consistent with the action taken in Nevada, this section should be restricted to rating organizations licensed for property insurance.

Section 2317(4) (p. 224) - This section provides for deviations and contains the old language that they shall be effective for a period of one year.

Comment: This provision has been found to involve both companies and Departments in unnecessary paper work arising out of renewals of deviations.

Recommendation: We recommend that in accordance with the NAIC action on this subject the language be changed to "not less than one year".

Section 2325 (p. 230) - This section permits insurers to create assigned risk plans.

Recommendation: In accordance with the law existing in most states, it should be restricted to casualty insurance.

Section 2327 (p. 232) - This provision appears to impose a substantial prohibition to insurers acting in concert unless they are of the same group of insurers.

Comment: It would appear to us that this subject is properly handled under Section 2322. Possibly this is a unique Maine provision representing a hand-over from the anti-compact laws days. While we are not aware of any complications arising out of this provision, if enforced it could create difficulties which do not appear to us to be in the interest of the insureds in the State of Maine. We will wish to discuss this particular section during the hearings on the subject.

Section 2329 (p. 233) - This section provides a penalty for wilful violation of the rating law, but like the law of the State of New York, it does not have a penalty for a simple violation not involving wilfulness.

Recommendation: Strange though it may seem, we believe it would be a proper strengthening of the law to provide for a reasonable penalty for simple violations.

Section 2412(3) (p. 343) - This subsection relates to the disapproval of forms filed for approval.

Comment: While we do not feel that a hearing should be required before the disapproval of a form made within the period of time when it is reviewed originally, we do feel strongly that it is unfair to insurers to permit the Commissioner to disapprove a form once approved or deemed approved without the requirement that the insurer be afforded a hearing prior to the disapproval order.

Recommendation: The section should be amended to require that any order of the Commissioner disapproving a form be made following a hearing in the same manner as is the case under the rating law. A Commissioner should not have the right to put an insurer out of business in matters of the use of forms where he has had a prior opportunity to determine whether or not a form meets the standards of law.

Section 2903 (p. 358) - This section provides for absolute liability of an insurer. It seems to us to be a provision of law peculiar to Maine and we would wish to review the purpose and need of the section during the course of the hearing along with the provisions of Section 2904.

Section 3002 (p. 361) - This section is a provision for the statutory standard fire policy in Maine.

Comment: For a number of years we have been faced with the problem in Maine that the provisions of the standard fire policy law require unique and specific language to be included in the fire contract with the result that it has been necessary to print special Maine policies which cannot be used in any other state. This appears to us to have been a matter of form rather than substance. We do not feel that the public of Maine has derived any real benefit from it. From our own standpoint, we think rigid policy requirements are not in the public interest and that the spirit of the law as indicated in Sections 3003 and 2414 of the proposed code more properly encompass philosophies in relation to the regulation of forms of insurance which advance the public interest than the more rigid type laws. However, we do not object to a reasonably stock fire policy law so long as it does not contain unique requirements which make necessary the printing of special policies for Maine.

It may be that the inclusion of Section 2414 is intended to take care of this problem. However, the specific nature of Section 3002 plus the reference to the pre-existing law creates at least a question in our mind whether or not the bill as drafted accomplishes this purpose without question.

Recommendation: That this problem be reviewed to determine whether or not unduly restrictive requirements resulting in unnecessary expense can be avoided.

LAW OFFICES OF

LOCKE, CAMPBELL & CHAPMAN

HERBERT E. LOCKE (1891 - 1962)
JOSEPH B. CAMPBELL
FRANK G. CHAPMAN

TEL. 623-4545
DEPOSITORS TRUST BUILDING
AUGUSTA, MAINE 04330

May [illegible], 19[illegible]

COPY

Dear [illegible],

[illegible] date, further examination of [illegible] discrepancy between Section 421 and [illegible], lines 11 through 13. Both [illegible] deal with the method of serving process upon an insurer. Section 421 applies to all domestic and foreign service upon the Commissioner, whereas Section 3953(2)(B) specifically applies to nonresidents and requires the power of attorney to [illegible] the attorney-in-fact. This [illegible] to some confusion as to the manner in which to serve [illegible] upon a resident.

Although I believe that [illegible] of the members of the American Life Insurance Association would be adversely affected by either of these provisions, I thought it might be well to point out the problem to you and [illegible] your opinion concerning the desirability of deleting this provision in Section 3953(2)(B), page 466, lines 11 through 13. Such amendment would not be absolutely vital to the interests of our members, but it might serve to forestall confusion. Incidentally, the recent Delaware Code originally had a provision similar to Section 3953(2)(B), but it was deleted in the [illegible] drafting stages. Of course, the amendment to Section 3953(2)(B) would be secondary to those suggested in my letter.

Sincerely yours,

[illegible] Kenneth P. MacLeod
[illegible] Street
[illegible], Maine 04401

LAW OFFICES OF

LOCKE, CAMPBELL & CHAPMAN

HERBERT E. LOCKE (1891 - 1962)
JOSEPH B. CAMPBELL
FRANK G. CHAPMAN

TEL. 623-4545
DEPOSITORS TRUST BUILDING
AUGUSTA, MAINE 04330

Monday, November [illegible]

COPY

Dear Ken,

Over [illegible] years my firm has acted as [illegible] for the American Reciprocal [illegible] Association. As such the Association has [illegible] to my attention [illegible] features in the September [illegible] of the proposed Insurance Code which it hopes can be reconsidered in the light of the comments which follow.

[illegible] of our members [illegible] confine the [illegible] of their [illegible] writing to specialty [illegible] such [illegible] fire insurance [illegible] manufacturing plants, [illegible], lumber yards, [illegible] processing plants. Their [illegible] shown that they [illegible] to do a better job of [illegible] writing of risks [illegible] use of their own salaried employees, [illegible] trained [illegible] in the underwriting hazards connected with such risks, [illegible] attempted to use for such [illegible] local resident agents [illegible] the necessary skills [illegible] experience attendant to the [illegible] writing of such hazards. These salaried employees [illegible] direct instruction of their respective home offices [illegible] responsible for the solicitation and inspection [illegible] risks in a multi-state area. Usually the salaried [illegible] resides [illegible] state of his assigned area and travels to the other assigned [illegible]. Because of this practice, these employees have [illegible] to be known as 'traveling salaried representatives,' and due recognition has been given them in the Insurance Codes of many states.

Today, Maine has a statutory provision recognizing these traveling salaried representatives and making due exception for them from the licensing laws applicable to insurance agents generally (Title 24, section 951). However, the proposed Insurance Code fails to make such recognition, either in the chapter dealing with reciprocal insurers (Sections 3851 et seq.) or in the chapter relating to the licensing procedures and general requirements of agents (Sections 1501 et seq.). Specifically, Section 1503 defines an agent as 'any person authorized or appointed by an insurer to solicit applications for insurance', and Section 15[illegible]7, after defining a 'service representative', goes on to provide that they must be licensed as agents. As we interpret these provisions, traveling salaried representatives of reciprocal insurers would have to be licensed as agents in Maine, either resident or nonresident, depending on their state of domicile.

"It would not be impossible for the traveling salaried representatives of our members to meet such requirements, but it certainly would be impracticable. One of the reasons for this is that these traveling salaried representatives confine their activities to inspection and underwriting of those lines which their employer insures and do not attempt to solicit and underwrite all classes of property and casualty risks. However, if they were required to be licensed as an agent, they would have to undergo the examination given to general lines agents under Section 1520. While they could no doubt pass such an examination, they would be required to prepare themselves to answer questions concerning lines of insurance which neither they nor their employer have any intention of underwriting. In recognition of this result and the fact that these traveling salaried representatives will not be soliciting insurance from the public at large but only for those special classes of risks insured by their employer, we believe the effect of the present exemption contained in Title 24, Section 951, should be carried forward into the new Code.

"One way in which this could be accomplished would be by inserting a period after the word 'such' on page 125, line 14, Section 1507, and inserting immediately thereafter, in lieu of the present language, the provisions contained in the new Delaware Insurance Code, so that, after amendment, Section 1507, subparagraph 2, would read as follows:

> 'Service representatives are not required to be licensed as such. Officers and salaried nonresident traveling representatives of property and casualty insurers not in general using resident agents for the solicitation of business, who inspect risks or solicit insurance in this state and receive no commissions thereon shall be deemed also to be service representatives.'

To avoid any possible confusion at a later date, such an amendment would probably have to be coupled with two corollary amendments. One would be to Section 1614, which prohibits the paying of 'any compensation' for the soliciting of insurance to anyone other than a licensed agent or broker. While these traveling salaried representatives are not normally compensated by commission, they are paid a salary. Probably some qualifying amendment should be made to this Section, for example, by inserting on line 20, page 161, after the words 'Section 1615', the words 'or 1507', so that after amendment such line would read:

> 'business placed pursuant to section (s) 1615 or 1507 of this Chapter or ....'

"An alternative to this would be by inserting on line 11, page 161, at the beginning of the sentence, the words 'Except as otherwise provided herein', so that after amendment such line would read:

'Except as otherwise provided herein, no insurer shall pay or allow to any person ....'

"The second corollary amendment would be to Section 1513, which defines those persons for whom no license is to be required. Subparagraph 3 of that section would bar service representatives from such exclusion through the words 'other than a service representative' appearing on page 129, lines 5 and 6. The implication that could be given to these words is that service representatives are required to be licensed as agents. If these words (that is, 'other than a service representative') were deleted, this implication would seem to be removed.

"One other objectionable provision of the Code appears in Section 410, page 34, line 29. That Section is the one which sets forth the financial requirements of the various types of insurers, and the clause to which we take exception is the grandfather clause exempting those insurers now licensed from the higher requirements imposed by this Code. The provisions on page 34, lines 28 and 29, make reference to both stock and mutual insurers but omit any reference to reciprocal insurers. We cannot help but feel that this was purely an oversight, and that it was the intention of the draftsmen to include reciprocal insurers within the provisions of this grandfather clause. Such a result could easily be obtained by inserting the words 'or reciprocal' immediately after the word 'mutual' on page 34, line 29, so that after amendment such line would read:

'mutual or reciprocal insurers) as required for such authority ....' ".

Let me say that my people recognize that the proposed code follows to a considerable extent the Delaware Insurance Code adopted earlier this year and they iddicate that if the amandments suggested above can be obtained it will be in a form generally acceptable to most of the members of the Association.

I have tried to set forth reasons for the amendments. If any questions occur to the drafting committee or if I have failed to make myself clear, please do not hesitate to let me know.

If and when time permits, I will appreciate hearing from you on these problems, particularly your thoughts concerning the chances for obtaining the desired relief. I certainly would be guided by your opinion but do want to try if there is reasonable chance for success.

Sincerely yours,

Hon. Kenneth P. MacLeod
96 Harlow Street
Bangor, Maine 04401

SECTION 228

In paragraph 1 amend the first sentence to add:

",except that an insurer shall have the option of making an annual payment each year in lieu of such expense in an amount equal to .00033 of its total admitted assets at the end of the preceding calendar year which amount shall be paid on March 1st with the filing of the annual statement, or of paying such expense as levied but not in excess of .0001 of ~~such~~ total admitted assets, whichever is the lesser."

SUCH

Don Perkins
draft

Draft

MEMORANDUM TO ALL STATE COLLEGES

The Commission to Revise the Insurance Laws of the State of Maine and its Counsel have devoted thousands of hours to the preparation of new statutes which retain much of the current law but which enhance the current law by encouraging competition and strengthening the regulatory powers of the Department of Insurance. In this process it has been brought to the attention of the Commission that the current law (apart from the new proposed Insurance Code), as interpreted by the Attorney General of the State of Maine, would require TIAA-CREF to become licensed in the State of Maine and to pay premium taxes on the non-pension * business of TIAA-CREF issued to residents of Maine. It should be noted that, contrary to articles that appeared in the press, the Commission at no time has sought to deal with the current tax law. Accordingly it would appear that such taxes would apply to TIAA-CREF regardless of whether TIAA-CREF were required to be licensed by any new law proposed by the Commission.

Subsequent to a public hearing on December 16th, 1968, a representative of TIAA-CREF (Mr. Paul Quinn) was given the special privilege of appearing before the Commission at a time convenient to him. At that time TIAA-CREF urged that the proposed Insurance Code be caused to amend the existing law to grant TIAA-CREF two exemptions, to wit:

1) A certificate of exemption from regulation; and
2) Exemption from taxation of all insurance products or services offered by TIAA-CREF. (Though explained as "essentially" a proposal similar to the existing law of Tennessee, Mr. Quinn noted that Tennessee does tax the individual policies of insurance offered by TIAA-CREF.

The Commission asked Mr. Quinn to document the total dollars of premiums paid by Maine residents which would become exempt from taxation if the TIAA-CREF proposal were adopted. (These would be premiums or payments in excess of pension annuities already exempted from taxation by the 103rd Legislature and

*All pension and insurance annuities under sections 401, 403, 404 or 501 of the Internal Revenue Code have the benefit of a phase out of tax provision which was adopted by the 103rd Maine Legislature and which will provide full exemption by 1972. (See 36 MSA 2514)

hence apparently would consist of payments for individual and group life, health, major medical and disability insurances.) To date no figures have been received but it is the understanding of the Commission from Mr. Quinn that relatively nominal non-pension payments are in issue.

Mr. Quinn was most careful to explain that the exemption provision sought solely for TIAA-CREF in its Maine proposal ran contrary to the overall industry proposal (supported by TIAA-CREF) to a recent committee of the National Association of Insurance Commissioners. That industry proposal was to exempt educators as a class from premium taxation, regardless of the nature of the company that might write the insurance. However, as Mr. Quinn pointed out, others had opposed even this concept. Indeed, at the public hearing of the Commission representatives of the Maine Life Underwriters questioned whether educators and the service or support personnel of Universities and Colleges, as a special class, were entitled to any more favored treatment than state or municipal employees, or other groups of persons serving the State of Maine.

It became clear to the Commission, therefore, that any proposal which it might recommend which would amend the existing tax law (as interpreted by the Attorney General), or eliminate the cloud currently existing viz-a-viz TIAA-CREF business in Maine (which would be the suggestion by TIAA-CREF), would be not only highly controversial but would require the Commission to become involved in the tax laws---an area which might be deemed beyond the scope of the Commission's authority. Consistent with this position, the Commission also has decided to refrain from action which would affect the tax status of the Blue Cross - Blue Shield companies in Maine. In addition, it was felt that the schedule of the Commission, which had afforded a special hearing and the receipt of the TIAA-CREF proposal, did not afford ample opportunity for notice of this proposal to other interested parties and the opportunity for these parties to be heard. Any action under these circumstances could be validly criticized and the entire Revision thereby jeopardized. Accordingly, the Commission resolved to take no action under the tax laws with respect to TIAA-CREF.

It is the understanding of the Commission that its refusal to take action leaves TIAA-CREF in exactly the same posture as it was in prior to any presentation of a proposed Revision of the Insurance Laws. That is, TIAA-CREF may seek what it would deem to be clarification of the existing law, and what the Attorney General would deem to be an amendment, by introducing a separate bill to exempt TIAA-CREF (or payments from educators as a class) from taxation imposed by Title 36, Chapter 357, of the existing law of the State of Maine. In this way the valid interests of the various parties can be fully explored with proper notice to which the TIAA-CREF proposal is entitled, which notice the combination of inclement weather and Commission schedule regretably precluded.

The Commission wishes to express its most sincere appreciation to all of those who took the time to appear. It regrets its inability to revolve the conflict which apparently exists in the current tax law. However, it believes the various ~~policies~~ Constituencies of the State of Maine will be better served by divorcing the overall Revision from the tax controversy inherent in the TIAA-CREF proposal.

Kenneth P. MacLeod, Chairman

CHAPTER 21. UNAUTHORIZED INSURERS - PROHIBITIONS, PROCESS AND ADVERTISING

§ 2101. Representing or aiding unauthorized insurer prohibited

* * *

2. This section does not apply to:

* * *

F. Transactions in this state involving contracts issued by a life insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening educational institutions by issuing insurance and annuity contracts only to or for the benefit of such institutions and individuals engaged in the service of such institutions; provided however, that any company issuing insurance or annuities as aforesaid shall hold a valid and unrevoked certificate of exemption issued pursuant to this subsection. The Commissioner shall, upon payment of a filing fee of $100.00, grant a certificate of exemption to any life insurance company, annuity company or other organization supervised by the insurance department of its state of incorporation:

(1) which is organized and operated without profit to any private shareholder or individual;

(2) which is organized and operated exclusively for the purpose of aiding educational institutions which are also organized and operated without profit to any private shareholder or individual;

(3) which serves that purpose by issuing insurance and annuity contracts only to or for the benefit of educational institutions or to individuals engaged in the service of such institutions;

(4) which is fully and legally organized and qualified

to do business and has been actively doing business under the laws of the state of its incorporation for a period of three years prior to its application for a certificate of exemption; and either possesses and maintains the amount of capital and surplus which would be required for a company to be qualified in this state to do the kind or kinds of business it transacts or possesses and maintains financial assets which in the opinion of the Commissioner are adequate for the kind or kinds of business it transacts;

(5) whose directors and officers are of known good character and are not affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person known to have been involved in the improper manipulation of assets, accounts, reinsurance or any matter inimical to the business of insurance; and

(6) which 1) appoints the Commissioner, and his successors in office, as its attorney to receive the service of process issued against it in this state, which appointment shall be irrevocable, shall bind such company and any successor in interest, and shall remain in effect so long as there is in force in this state any contract or policy made or issued by such company or any obligation arising therefrom; 2) files a copy of any policy or contract form issued to residents of this state with the Commissioner; 3) files a copy of its annual statement prepared pursuant to the laws of its state of in-

corporation, as well as such other financial material as may be requested, with the Commissioner; and 4) agrees to submit to periodic examinations as may be deemed necessary by the Commissioner.

(7) Any corporation holding a certificate of exemption shall be exempt from the provisions of Title 36, Chapter 357.

Add To § 2420

4. Any individual insured under a group insurance policy or group annuity contract shall have the right, unless expressly prohibited under the terms of the policy or contract, to assign to any other person his rights and benefits under the policy or contract, including, but not limited to, the right to designate the beneficiary or beneficiaries and the rights as to conversion provided for in sections 2621 through 2625 of this Title. While the assignment is in effect the insurer shall be entitled to deal with the assignee as the owner of such rights and benefits in accordance with the terms of the assignment; but without prejudice to the insurer on account of any lawful action taken or payment made by it prior to receipt by it at its home office of written notice of the assignment or of the termination thereof.

, and whether heretofore or hereafter made,

2430

4. Any individual insured under a group insurance policy shall have the right, ~~if~~ unless expressly prohibited under the terms of the policy, to assign to any other person ~~his~~ the rights and benefits under such policy, including, but not limited to, the right to designate the beneficiary or beneficiaries and the rights of conversion provided for in sections ~~2621~~ 2621 through 2625 of this ~~chapter~~ Title. The insurer shall ~~after receipt at its home office of written notice of the assignment~~ be insurer shall deal with it

While the assignment is in effect, ~~and without written notice has been received by the insurer at its home office~~ the insurer shall be entitled to deal with the assignee as the owner of ~~the~~ such rights and benefits in accordance with the terms of the assignment; but without prejudice to the insurer on account of any lawful action ~~or payment made~~ taken by it prior to ~~such~~ receipt by it (at its home office) of written notice of the assignment or of the termination thereof.

§ 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to all its cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than $100,000 as to an insurer formed prior to January 1, 1968, and of not less than $200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requiremet for a period of one year.

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

4. Nothing in this chapter shall prohibit or be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies in qualified therefor as above provided in this section;

B. Cash premium plan, with contingent liability to assessment; and

C. Assessment ~~premium~~ plan.

§ 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to ~~all its~~ cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than $100,000 as to an insurer formed prior to January 1, 1968, and of not less than $200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requirement for a period of one year.

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2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requirement for a period of one year.

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A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section;

B. Cash premium plan, with contingent liability to assessment; and

C. Assessment ~~premium~~ plan.

§ 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to ~~all its~~ cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than $100,000 as to an insurer formed prior to January 1, 1968, and of not less than $200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requirement for a period of one year.

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

4. Nothing in this chapter shall ~~prohibit or~~ be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section;

B. Cash premium plan, with contingent liability to assessment; and

C. Assessment ~~premium~~ plan.

§ 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to ~~all its~~ cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than $100,000 as to an insurer formed prior to January 1, 1968, and of not less than $200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requirement for a period of one year.

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

4. Nothing in this chapter shall ~~prohibit or~~ be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section;

B. Cash premium plan, with contingent liability to assessment; and

C. Assessment ~~premium~~ plan.

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Insurance Copy to Geo. Dent

3367 Nonassessable policies; assessable, nonassessable liability

]. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to all its cash plan policies in force and may omit provisions imposing contingent liability in such policies currently issued upon compliance with the following requirement, ~~notwithstanding any special law or charter previously enacted by the Legislature:~~

~~A.~~ Surplus. The insurer shall have and maintain a surplus to policyholders, as determined by its last annual statement filed with the commissioner, of not less than $]00,000, for an insurer heretofore formed and transacting insurance and of not less than $200,000 for an insurer hereafter formed.

2. If such an insurer, after qualifying to issue a non-assessable caxh premium policy, fails to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the requirements for a period of one year.

3. Notwithstanding the foregoing, a domestic mutual insurer may also issue assessment plan policies and assessable cash plan policies. Any assessment, ~~special or regular,~~ levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of the holders of policies subject to ~~assessment~~ contingent liability, and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the ~~assessable~~ contingent liability business bears to the total deficiency. Such assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred and shall be for the exclusive benefit of the holders of such policies.

4. Cancellation etc.

which shall contain the following general conditions and stipulations:

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securites; nor, unless specifically, named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order

of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other Insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a ten days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices

and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fiteeen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices

and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fiteeen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

Countersignature Date

. . . . . .Agent

In Consideration of the Provisions and Stipulations herein or added hereto and of the premium above specified, this Company, for the term of . . . . . from . . . . . .at noon (Standard Time) to . . . . . at noon (Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified, does insure . . . . . and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

which shall contain the following general conditions and stipulations:

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securites; nor, unless specifically, named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order

§2112. Reciprocal judgment

The Attorney General upon request of the commissioner may proceed in the courts of this State or any reciprocal state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

1. Definitions. In this section:

A. "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, against insurers incorporated or authorized to do business in such state.

B. "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state", including a court of the United States located therein, against a "domestic insurer" obtained by a "qualified party".

C. "Domestic insurer" means any insurer incorporated or authorized to do business in this State.

D. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. List of reciprocal states. The commissioner shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. Filing and status of foreign decrees. A copy of any foreign decree authenticated in accordance with the act of Congress or the statutes of this State may be filed in the office of the clerk of any Superior Court of this State. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a Superior Court of this State. A foreign decree so filed has the same effect and shall be deemed as a decree of a Superior Court of this State, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a Superior Court of this State and may be enforced or satisfied in like manner.

4. Notice of filing.

A. At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

B. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given, and to the commissioner, and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the commissioner and may file proof of mailing with the clerk. Lack of mailing notice or filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed.

C. No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

5. Stay.

A. If the defendant shows the Superior Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

B. If the defendant shows the Superior Court any ground upon which enforcement of a decree of any Superior Court of this State would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this State.

6. Fees. Any person filing a foreign decree shall pay to the clerk of court the applicable fee. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the Superior Court.

§ 2112. Reciprocal judgment

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A. "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, against insurers incorporated or authorized to do business in such state.

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C. No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

5. Stay.

A. If the defendant shows the Superior Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

B. If the defendant shows the Superior Court any ground upon which enforcement of a decree of any Superior Court of this State would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this State.

6. Fees. Any person filing a foreign decree shall pay to the clerk of court the applicable fee. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the Superior Court.

~~41-1233~~. **Report and tax of independently procured coverages.** ~~(1)~~ Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line broker pursuant to the surplus line law of this state or exempted from tax pursuant to section ~~41-1212~~, shall within thirty (30) days after the date such insurance was so procured, continued or renewed file a written report of the same with the commissioner on forms designated by the commissioner and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as the commissioner reasonably requests. If the insurance covers also a subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated to this state for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the insured with respect to the obligation, chose in action, or right represented by such insurance, a tax at the rate of three percent (3%) of the gross amount of the premium charged for the insurance. Within thirty (30) days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the commissioner.

(4) The tax imposed hereunder if delinquent shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(5) The tax shall be collectible from the insured by civil action brought by the commissioner, or by distraint.

(6) The commissioner shall promptly deposit all taxes and interest collected under this section with the ~~state~~ treasurer to the credit of the ~~state's~~ general fund.

(7) This section does not abrogate or modify any provision of sections ~~41-1201~~ (representing or aiding unauthorized insurer prohibited), 41-1202 (representing or aiding unauthorized insurer prohibited—penalty), or 41-1203 (suits by unauthorized insurer prohibited).

(8) This section does not apply as to life or disability insurances. [1961, ch. 330, § 277, p. 645.]

41-1233. Report and tax of independently procured coverages.—(1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line broker pursuant to the surplus line law of this state or exempted from tax pursuant to section 41-1212, shall within thirty (30) days after the date such insurance was so procured, continued or renewed file a written report of the same with the commissioner on forms designated by the commissioner and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as the commissioner reasonably requests. If the insurance covers also a subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated to this state for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the insured with respect to the obligation, chose in action, or right represented by such insurance, a tax at the rate of three percent (3%) of the gross amount of the premium charged for the insurance. Within thirty (30) days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the commissioner.

(4) The tax imposed hereunder if delinquent shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(5) The tax shall be collectible from the insured by civil action brought by the commissioner, or by distraint.

(6) The commissioner shall promptly deposit all taxes and interest collected under this section with the state treasurer to the credit of the state's general fund.

(7) This section does not abrogate or modify any provision of sections 41-1201 (representing or aiding unauthorized insurer prohibited), 41-1202 (representing or aiding unauthorized insurer prohibited—penalty), or 41-1203 (suits by unauthorized insurer prohibited).

(8) This section does not apply as to life or disability insurances. [1961, ch. 330, § 277, p. 645.]

§ 228. New subsection 3:

3. Except, that in lieu of payment of examination expense as above ~~provided~~ required, a domestic insurer shall have the right, at its option, of making an annual payment to the commissioner of an examination expense allotment in an amount equal to .00033% of its total admitted assets as of the end of the preceding calendar year, and which payment shall be made on March 1 with the filing of the insurer's annual statement with the commissioner; or, if the insurer' admitted assets exceed $10,000,000, the insurer shall have the right, at its further option, to pay to the commissioner with respect to any examination the lesser of:

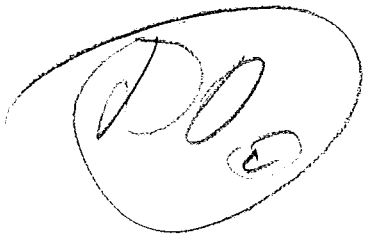
A. The expense of the examination as determined pursuant to subsections 1 ~~and~~ and 2 above; or

B. An amount equal to ~~x0000x~~ .001% of the first $10,000,000 of the insurer's admitted assets plus .0001% of the remainder of such assets, as such assets are shown by the insurer's financial statement filed with the commissioner for the year-end next preceding the commencement of the examination.

8228 — Amendment

except that a domestic insurer shall have the option of making an annual payment each year in lieu of such expense assessment in an amount equal to .00033 of its total admitted assets at the end of the preceding calendar year which amount shall be paid on March 1st with the filing of the annual statement, or; if an insurer having more than Ten Million Dollars of such total assets, of paying the amount of such assessment ~~such expense~~ as levied but not in excess of .001 of the first Ten Million Dollars of such assets plus .0001 of the balance of such total admitted assets, whichever is the lesser.

** V1 Frank Fowler



DOMESTIC MUTUAL INSURERS

Further grandfather rights as to amount of surplus required for transaction of additional kinds of insurance.

To section 410, page 35, at line 4 add this additional sentence:

"Except, that a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than $200,000*, may be authorized to transact such additional kinds of insurance as were then authorized by its charter; subject, however, to the same minimum required basic surplus amount as is applicable as to foreign mutual insurers under subsection 1, above, if the insurer is to transact life insurance together with any one or more of property, casualty, surety, or marine & transportation insurances."

*This amount is arbitrary. The amount should be large enough to sustain the broad insuring powers, and is subject to further consideration by those concerned and by the Commission.

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12-16-68

, or all of the stock of a proposed parent corporation of the insurer

3. Any such combination stock and mutual insurer referred to in subsection 1 above must have and maintain separate paid-in capital stock and basic and other surplus funds, as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

in respective amounts

3. Any such combination stock and mutual insurer referred to in subsection 1 above must have and maintain separate paid-in capital stock and basic and other surplus funds, ~~xxxxxx~~ in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

6. Loans authorized under this section may be made by domestic insurers as well as by other persons; but such a loan shall not constitute an asset in any determination of the financial condition of the lending insurer.

For the purposes of this subsection an agent's license covering fire insurance and existing on the effective date of this Act shall be deemed to be the equivalent of a license covering "property" insurance as defined in this Title.

which shall contain the following general conditions and stipulations:

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securites; nor, unless specifically, named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order

of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other Insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

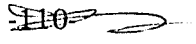
(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a ten days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.



Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices

and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fiteeen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within ~~twelve months~~ Two years next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

~~IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.~~

~~-112-~~

2. The insurer may use an endorsement or rider attached to its ~~printed~~ policy forms used in other states in order, where necessary, to bring the terms of such form into compliance with the above ~~provisions~~ provisions.

SEC 3002

NO INSURER SHALL ISSUE A FIRE INSURANCE POLICY ON PROPERTY IN THIS STATE UNLESS SUCH POLICY CONTAINS WORDING IDENTICAL TO THAT OF THE FIRE INSURANCE POLICY APPROVED BY THE COMMISIONER AND KNOWN AS THE MAINE STANDARD POLICY, EXCEPT AS FOLLOWS:

1-
2-
3-
4- AS IN CODE PROPOSAL.
5-
6-
7-

DOMESTIC MUTUAL INSURERS

Further grandfather rights as to amount of surplus required for transaction of additional kinds of insurance.

To section 410, page 35, at line 4 add this additional sentence:

"~~Except, that a domestic mutual insuror formed prior to January 1,~~ 1968, and while possessing surplus of not less than $200,000*, may be authorized to transact ~~such~~ additional kinds of insurance ~~as were then~~ authorized by its charter; subject, however, to the same minimum required basic surplus amount as is applicable as to foreign mutual insurers under the table in subsection 1, above, if the insurer is to transact life insurance ~~xxxx~~ together with any one or more of property, casualty, surety, or marine & transportation insurances."

*This amount is arbitrary. The amount should be large enough to sustain the broad insuring powers, and is subject to further consideration by those concerned and by the Commission.

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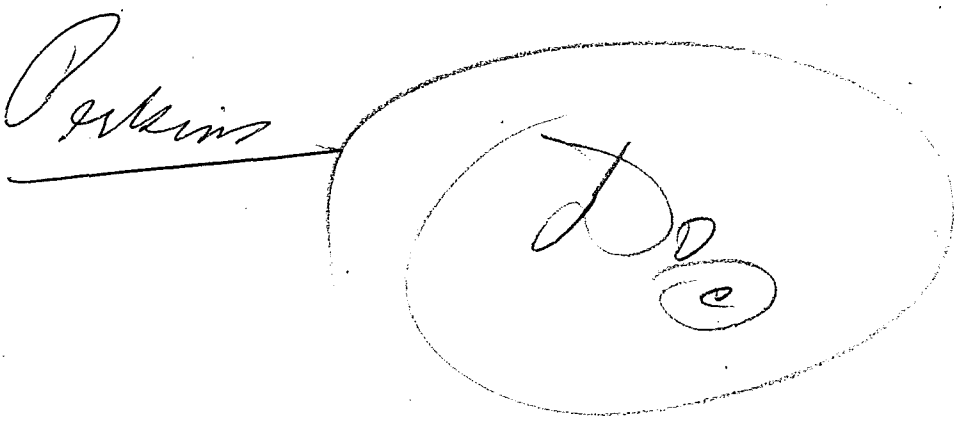
12-16-68



Page 195

New §2113. Reciprocal judgment

Add the following reciprocal judgment provisions to Chapter 21, as Section 2113:

"§2113. Reciprocal judgment

The Attorney General upon request of the commissioner may proceed in the courts of this state or any reciprocal state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner, of insurance.

1. Definitions. In this section:

A. "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, or territories of the United States, against insurers incorporated or authorized to do business in such state or territory.

B. "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state", including a court of the United States located therein, against a "domestic insurer" obtained by a "qualified party".

C. "Domestic insurer" means any insurer incorporated or authorized to do business in this State.

D. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. List of Reciprocal States. The ~~insurance~~ commissioner ~~of this state~~ shall determine which states ~~and territories~~ qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. Filing and Status of Foreign Decrees. A copy of any foreign decree authenticated in accordance with the act of Congress or the statutes of this State may be filed in the office of the Clerk of any ~~(insert proper court)~~ Superior Court ~~court~~ of this State. The Clerk, upon verifying with the ~~insurance~~ commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a ~~(insert proper court)~~ Superior Court ~~court~~ of this State. A foreign decree so filed has the same effect and shall be deemed as a decree of a ~~(insert proper court) court~~ Superior Court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a ~~(insert proper court)~~ Superior Court ~~court~~ of this state and may be enforced or satisfied in like manner.

4. Notice of Filing.

A. At the time of the filing of the foreign decree, the Attorney General shall make and file with the Clerk of the Court an affidavit setting forth the name and last known post office address of the defendant.

B. Promptly upon the filing of the foreign decree and the affidavit, the Clerk shall mail notice of the filing of the foreign decree to the defendant

at the address given, and to the ~~insurance~~ commissioner, ~~of this State~~ and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the ~~Insurance~~ Commissioner ~~of this state~~ and may file proof of mailing with the Clerk. Lack of mailing notice or filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed.

C. No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

5. Stay.

A. If the defendant shows the ~~(insert proper court) court~~ Superior Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

B. If the defendant shows the ~~(insert proper court) court~~ Superior Court any ground upon which enforcement of a decree of any ~~(insert proper court) court~~ Superior Court of this State would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this State.

6. Fees. Any person filing a foreign decree shall pay to the Clerk of Court the applicable fee. ~~(enter appropriate amount) dollars~~. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the Superior Court ~~(insert proper court)~~ court.

Reason:

The application of full faith and credit to injunctive decrees is questionable. This is also true in cases of money judgments, except those for taxes, when the amounts involved suggest that their purpose is penal in nature. The amount of $2,000 expressed in §2111 (page 194) seems to be clearly penal in nature.

Therefore, unless the suggested provisions, taken from the NAIC Model Unauthorized Insurers Statute adopted at their meeting in Los Angeles last week, are included in the Proposed Maine Code, extraterritorial effect probably would not be given to the judgments obtained by the commissioner.